EDWIN RAZON Y LUCEA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 158053. June 21, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before this Court is a Petition for Review on Certiorari seeking the reversal of the Court of Appeals' (CA) Resolution dated January 31, 2001[1] in CA-G.R. CR No. 22211 entitled "People of the Philippines v. Edwin Razon y Lucea" and the CA Resolution dated April 14, 2003[2] which denied petitioner's motion for reconsideration.

The facts as found by the Regional Trial Court (RTC) are summarized as follows:

PO1 Francisco Chopchopen (Chopchopen) was walking towards Upper Pinget Baguio City, at around midnight of August 1, 1993, when a taxicab driven by Edwin Razon y Lucea (Razon) stopped beside him. Razon told Chopchopen that he was held up by three men at Dreamland Subdivision. Chopchopen then asked Razon to go with him to the place of the incident to check if the persons who held him up were still there. Razon was hesitant at first but eventually went with Chopchopen to said area about 100 meters up the road. While walking about eight meters off the road, Chopchopen noticed a person lying on the ground and partially hidden by a big stone. Upon closer look, Chopchopen saw that the person's shirt was soaked in blood and that he was hardly breathing. Lying beside the man was a wooden cane. Chopchopen asked Razon to help him bring the person to the hospital. On the way, Chopchopen asked Razon if he was the one who stabbed the victim. Razon answered no. Soon they met a police mobile patrol driven by SPO2 Samuel Bumangil (Bumangil) who followed them to Baguio General Hospital. The victim, who was later identified as Benedict Kent Gonzalo (Gonzalo), was pronounced dead on arrival.[3] He was 23 years old and a polio victim.[4]

Upon questioning, Razon told Bumangil that he was held up by three men, which included Gonzalo whom he stabbed in self-defense. Razon brought out a fan knife and told Bumangil that it was the knife he used to stab Gonzalo. A later search of the cab however yielded another weapon, a colonial knife with bloodstains which was found under a newspaper near the steering wheel. At the police station, Razon admitted having stabbed Gonzalo but insisted that he did so in self-defense.[5]

An autopsy conducted on the body of the victim showed that he sustained three stab wounds, to wit: a stab wound measuring 2.5 cms. found in the front and lower quadrant of the abdomen, directed inward towards the mid-line and slightly upward entering the abdominal wall and perforating the small intestines, pancreas and the abdominal aorta, having an approximate depth of 12 cm.; a stab wound on the left arm measuring 5 cm. with one end blunt and the other end sharp having an approximate depth of about 1 cm.; and a stab wound on the right buttock 1.3 cm. long with a depth of about 4 cm. The stab wound on the abdomen killed Gonzalo, as it penetrated the small intestines, pancreas and the abdominal aorta, causing massive hemorrhage and loss of blood. Abrasions and contusions were also found on the body of Gonzalo, located on the left ear lobe, on the chest, on the left

anterolateral side, on the mid-posterior aspect and on the lumbar region of the back.[6]

Razon for his part asserted that he acted in self-defense. He claimed that around 11:30 p.m. on August 1, 1993, three men boarded his cab from the Philippine Rabbit bus station along Magsaysay Avenue in Baguio who asked to be brought to Dreamland Subdivision in Pinget for the total sum of P90.00. Upon reaching their destination and while Razon was turning the cab around, Gonzalo, who was seated behind the driver's seat, declared a hold-up and poked a Batangas knife (veinte nueve) at the right side of the base of Razon's neck. The two other passengers were shocked but Gonzalo told them to get their knives, stab Razon and grab his right hand. Razon however was able to grab the knife and release his right hand from Gonzalo's two companions. Gonzalo's companions then went out of the cab and picked up stones. Gonzalo followed and Razon ran after them. Gonzalo was swinging his cane and it hit Razon on his right leg. Razon then thought of his knife inside the cab and he went to get it and confronted the

three by swinging his knife from left to right. Gonzalo's companions ran away and Razon went back to his cab and left.[7]

Not finding credence in Razon's claim of self-defense, RTC Branch 60 of Baguio City convicted him of homicide as follows:

> WHEREFORE, this Court finds the accused, Edwin Razon y Lucea, GUILTY beyond reasonable doubt of the crime of HOMICIDE. There being no mitigating or aggravating circumstance, he is hereby sentenced to an indeterminate penalty of 6 years and 1 day of prision mayor as minimum, to 14 years 8 months and 1 day of reclusion temporal as maximum.
>
> He is further ordered to pay the heirs of Benedict Kent Gonzalo, Jr. the amount of P12,770.00 by way of actual damages; P50,000.00 by way of moral damages; and P10,000.00 by way of attorney's fees.
>
> SO ORDERED.[8]

Razon filed a notice of appeal,[9] and the CA required him, through his counsel Atty. Rigoberto D. Gallardo (Atty. Gallardo) to file an appellant's brief.[10] Two motions for extension of time were filed by Atty. Gallardo.[11] Instead of filing the brief, however, Atty. Gallardo filed a Motion to Withdraw as Counsel for the Accused-Appellant on January 7, 1999, claiming that Razon had consistently shown his disinterest in the case by not attending much needed conferences.[12] The CA ordered Atty. Gallardo to file another motion to withdraw with Razon's conformity; thus Atty. Gallardo filed a motion dated February 1, 1999, with a signature, purportedly that of Razon's.[13] Later, the CA received a Manifestation dated February 17, 1999, stating that Atty. Gallardo's firm could not secure Razon's signature to signify his conformity to Atty. Gallardo's withdrawal as his counsel, Atty. Gallardo thus requested that he be relieved of his responsibilities as counsel even without Razon's conformity.[14]

Due to the inconsistency of the manifestations of Atty. Gallardo in his motions dated February 1, 1999 and February 17, 1999, the CA issued a Resolution directing Razon to manifest the authenticity of his signature appearing on the February 1, 1999 motion to withdraw as counsel filed by Atty. Gallardo. The CA also required Razon to cause the entry of appearance of a new counsel within 5 days from notice.[15]

On August 27, 1999, the CA granted Atty. Gallardo's motion to withdraw as counsel and directed Razon anew to cause the entry of appearance of his new counsel or manifest whether he wanted the CA to appoint a counsel de oficio to defend him, within five days from notice with warning that failure to comply with said Resolution shall cause the dismissal of his appeal.[16]

On February 22, 2000, the CA again issued a Resolution which noted the Judicial Records Division (JRD) report

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that no compliance had been filed by Razon with the resolution dated August 27, 1999; considered the right of the accused to be represented by counsel as waived; and directed the JRD, in the interest of justice, to resend the notice to file brief to Razon.[17] On February 28, 2000, the CA issued another notice to file brief, this time addressed to and received by Razon himself.[18] On July 12, 2000, the CA issued a Resolution requiring Razon to show cause why his appeal should not be dismissed for failure to file the required brief despite notice thereof.[19]

With the failure of Razon to comply with the said directives, the CA on January 31, 2001, issued the herein assailed Resolution dismissing his appeal as follows:

> WHEREFORE, the appeal is deemed ABANDONED and DISMISSED on authority of Section 8, Rule 124 of the Revised Rules of Criminal Procedure.[20]

On July 25, 2001, the CA received a Motion for Reconsideration filed by Razon stating that he could not read and understand English and that Atty. Gallardo was negligent of his duties to him, as said lawyer filed his withdrawal of appearance even without his (Razon's) knowledge and conformity.[21]

The CA denied Razon's motion for reconsideration through its Resolution dated April 14, 2003, thus:[22]

> - Indeed the instant motion for reconsideration was filed out of time in violation of Section 16, Rule 124 of the same Rules – for the appellant admitted that on March 6, 2001 he received this Court's Resolution dated January 31, 2001 dismissing his appeal but the record shows that he filed the subject motion four months later or only on July 19, 2001 to be exact.
>
> - Our dismissal is warranted by Section 8 of Rule 124 and circumstances showing that it was not only his previous counsel that was lax and negligent but the appellant as well...
>
> x x x
>
> - The appellant had ignored Our directives and the option given him to have the services of a counsel de oficio.[23]

Petitioner now comes before this Court claiming that the CA erred in declaring his appeal as abandoned and dismissed.[24] He claims that he is not bound by the actions of Atty. Gallardo who was negligent of his duties to him; Atty. Gallardo failed to file the required appeal brief before the CA despite the many extensions given him; worse, Atty. Gallardo filed a motion to withdraw his appearance as petitioner's counsel without petitioner's knowledge; it was only when he received the CA Resolution dated January 31, 2001 that he learned of the withdrawal of Atty. Gallardo as his counsel, and it was only then that Atty. Gallardo advised him to get another lawyer; petitioner received the records of the case from Atty. Gallardo, only on March 9, 2001; petitioner failed to comply with the CA resolutions because he could not understand the same due to his educational deficiency; and given the chance to ventilate his appeal, petitioner would be absolved of the charge against him as he truly acted in self defense.[25]

For the State, the Office of the Solicitor General (OSG) contended that petitioner himself is guilty of negligence; the CA gave him ample opportunity to secure the services of counsel or manifest his desire to have a counsel de oficio appointed by the court, but petitioner ignored said directives; petitioner's motion for reconsideration of the CA's Resolution dated January 31, 2001 was also filed out of time; and Sec. 8, Rule 124 of the Rules of Court provides that the appellate court may dismiss an appeal if the appellant fails to file his brief within the time prescribed by the said Rule.[26]

Petitioner filed a Reply and both parties filed their memoranda reiterating their respective arguments.[27]

Sifting the arguments raised, it is clear that only two questions need to be answered: (1) whether the CA erred in

dismissing petitioner's appeal for failure to file appellant's brief; and (2) whether petitioner acted in self-defense in killing Gonzalo.

The Court answers both questions in the negative.

The first issue. Whether the CA erred in dismissing petitioner's appeal for failure to file appellant's brief.

While appeal is an essential part of our judicial system, a party must strictly comply with the requisites laid down by the Rules of Court on appeals, mindful of the fact that an appeal is purely a statutory right. Procedural rules are designed to facilitate the adjudication of cases. Both courts and litigants are therefore enjoined to abide strictly by the rules. While there are instances when the Court allows a relaxation in the application of the rules, such liberality is not intended to forge a bastion for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances.[28]

Indeed, the CA may dismiss an appeal for failure to file appellant's brief on time. It is given the discretion which must be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.[29]

In this case, the CA gave petitioner sufficient opportunity to file his appellant's brief. Instead of complying, however, petitioner chose to ignore the many directives of the CA and now puts the blame on his former counsel Atty. Gallardo, who was allegedly guilty of gross negligence.

Even if the Court were to admit that Atty. Gallardo was negligent, the rule is that negligence of counsel binds the client. The only exception is when the negligence of said counsel is so gross, reckless and inexcusable that the client is deprived of his day in court.[30] No such excepting circumstance can be said to be present in this case because as properly observed by the appellate court, petitioner himself was guilty of negligence.[31]

As borne by the records, the CA issued a Resolution on April 15, 1999 requiring petitioner to manifest within five days from receipt thereof the authenticity of his signature appearing in the motion to withdraw as counsel filed by Atty. Gallardo dated February 1, 1999, and to inform the CA of his new counsel.[32] On August 27, 1999, the CA granted Atty. Gallardo's motion to withdraw as counsel and required petitioner anew to cause the entry of appearance of his new counsel or manifest whether he desires the CA to appoint a counsel de oficio to defend him, with a warning that failure to comply with the said resolution shall cause the dismissal of his appeal. On February 28, 2000, the CA issued another notice to file brief, this time addressed to Razon himself.[33] In a Resolution dated July 12, 2000, the CA required Razon to show cause why his appeal should not be dismissed for failure to file the required brief.[34] On January 31, 2001, or almost three years after the notice of appeal was filed, the CA finally issued a resolution dismissing petitioner's appeal.[35]

Despite the many notices given him, Razon still failed to comply with the CA's directives. He also took a long time to file his motion for reconsideration of the CA's January 31, 2001 Resolution because while he admittedly received a copy of the said resolution on March 6, 2001, he only filed his motion for reconsideration on July 19, 2001 or more than four months later.

It is thus clear that petitioner was guilty of neglect. He was aware of his conviction and of the requirement of filing an appellant's brief.[36] Yet he had no urgency in filing the same, even with the CA's explicit orders. His excuse that his educational deficiency prevented him from complying with the CA's resolutions deserves scant consideration. He was able to secure the services of counsel to file for him a petition before this Court. Had he exerted earlier the kind of effort he put in getting a new counsel, or had he simply notified the court of his desire to have a counsel de oficio assigned to him, then he would not have to contend with the predicament he is

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presently in. For the resolution of the CA dismissing his appeal on the ground of abandonment, petitioner has no one else to blame but himself.

The second issue. Whether petitioner acted in self-defense.

While the CA did not rule on the merits of the case, it is best not to remand the case to the CA. All the records and evidence necessary for the determination of the innocence or guilt of the petitioner are before this Court. Thus, for a complete and full disposition of the case and to avert further delay in the disposition of the same, the Court shall hereby resolve the case on the merits.[37]

It is settled that when an accused admits killing the victim but invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim.[38] Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.[39] Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.[40]

Here, petitioner admitted having inflicted the wound which killed Gonzalo.[41] The burden is therefore on him to show that he did so in self-defense. As correctly found by the RTC, however, petitioner failed to prove the elements of self-defense.

To escape liability, the person claiming self-defense must show by sufficient, satisfactory and convincing evidence that: (1) the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person claiming self-defense; (2) there was reasonable necessity in the means employed to prevent or repel the unlawful aggression; and (3) there was lack of sufficient provocation on the part of the person claiming self-defense or at least any provocation executed by the person claiming self-defense was not the proximate and immediate cause of the victim's aggression.[42]

The condition sine qua non for the justifying circumstance of self-defense is the element of unlawful aggression.[43] There can be no self-defense unless the victim committed unlawful aggression against the person who resorted to self-defense.[44] Unlawful aggression presupposes an actual, sudden and unexpected attack or imminent danger thereof and not just a threatening or intimidating attitude.[45] In case of threat, it must be offensive, strong and positively showing the wrongful intent to cause injury.[46] For a person to be considered the unlawful aggressor, he must be shown to have exhibited external acts clearly showing his intent to cause and commit harm to the other.[47]

Petitioner claims that Gonzalo, who was seated behind him in the taxicab, declared a hold-up and poked a knife at the base of his neck. Granting that this is true, what transpired next, changed the nature of the roles played by petitioner and Gonzalo.

As correctly found by the trial court:

> Without scrutinizing Razon's assertion that he was held up, and assuming the same to be true, there was, indeed unlawful aggression when Gonzalo poked a knife on Razon's neck. But, when Razon, in a Herculean feat, was able to grab the knife from Gonzalo and freed his right hand from the hold of Gonzalo's two companions, the aggression no longer existed. In fact, Gonzalo's two companions, went out of the taxicab and Gonzalo himself went out also towards the canal of the road. At this point, Razon could have started his taxicab and left the place because he was left alone in the taxicab. But he did not. He went after Gonzalo and his two companions and started swinging the knife he grabbed from Gonzalo. He even had time to go back to the taxicab and get his own knife and then went back to the three men. He then was holding two knives. There was no proof that Gonzalo's companions were able to throw stones at him or the taxicab to indicate perhaps,

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> that his three passengers who intended to hold him up continued their unlawful aggression...
>
> When Gonzalo and his two companions went out of the taxicab, and Razon followed them outside, Razon became the aggressor. The wounds sustained by Gonzalo would clearly show that he was attacked by Razon.[48]

Such findings are well supported by the records. During his direct testimony, Razon admitted that he followed the three men, including Gonzalo, after they got out of the cab. Then he went back to his cab to get his knife.[49] On cross-examination, Razon admitted the same thing, and added the following:

> Q.
>
> And you said that you swung the knife from left to right, is that correct?
>
> A.
>
> Yes, sir.
>
> Q.
>
> And you were able to hit Benedict Kent Gonzalo, Jr.?
>
> A.
>
> Yes, sir.
>
> x x x
>
> Q.
>
> So you admitted that the injuries sustained by Benedict Kent Gonzalo in front of his abdomen was due to your act of swinging the knife from left to right in front of him?
>
> A.
>
> Yes, sir.
>
> x x x
>
> Q.
>
> And tell the Court if this is the one that you used, this colonial knife, previously marked as Exh. "A."
>
> A.
>
> This is the one, sir.
>
> Q.
>
> Yes, you testified the last time that you have to go back to your taxi cab and get this knife marked as Exh. "A"?
>
> A.
>
> Yes, sir.[50] (Emphasis supplied)
>
> On re-cross, Razon further admitted that:
>
> Q.
>
> And you went near the canal where Benedict Kent Gonzalo, Jr. was?

A.

Yes, sir.

Q.

And the two others were already running away?

A.

They were still there at that time.

Q.

Do you know that Benedict Kent Gonzalo, Jr. was a victim of polio?

A.

No, sir.

Q.

But he did not run unlike the other two?

A.

Yes, sir.

Q.

He was in the canal which is lower than the road, is that correct?

A.

Yes, sir.

ATTY. GALLARDO:

Witness is demonstrating the height of the canal about one foot, Your Honor.

ATTY. MOLINTAS:

You have to go near him and go down the canal also, is that correct?

A.

Yes, sir.

Q.

That's where you swung your knife left and right towards Benedict Kent Gonzalo, Jr.?

A.

Yes, sir.

Q.

And Benedict Kent Gonzalo, Jr. did not try to run away from you?

A.

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When I went up to get my taxi, that was the time he run away, sir.[51] (Emphasis supplied)

Petitioner unequivocally admitted that after the three men went out of his taxicab, he ran after them and later went back to his cab to get his colonial knife; then he went down the canal to swing his knife at the victim, wounding and killing him in the process. Such can no longer be deemed as self-defense.

It is settled that the moment the first aggressor runs away, unlawful aggression on the part of the first aggressor ceases to exist; and when unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed.[52] Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him, while in self-defense the aggression was still existing when the aggressor was injured by the accused.[53]

Even assuming that some danger did in fact exist, the imminence of that danger had already ceased the moment petitioner was able to disarm the victim by wresting the knife from the latter. After the former had successfully seized the weapon, and he as well as his companions went out of the cab, there was no longer any unlawful aggression to speak of that would have necessitated the need to kill the victim.[54]

The defense employed by petitioner also cannot be said to be reasonable. The means employed by a person claiming self-defense must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression.[55] The nature or quality of the weapon; the physical condition, the character, the size and other circumstances of the aggressor as well as those of the person who invokes self-defense; and the place and the occasion of the assault also define the reasonableness of the means used in self-defense.[56]

In this case, the deceased was a polio victim, which explains the presence of the wooden cane at the scene of the crime.[57] Petitioner also admitted that when he went after Gonzalo, he had in his possession two knives, the Batangas knife he wrested from the hold-uppers and the colonial knife which he took from his cab.[58]

Other circumstances also render petitioner's claim of self-defense as dubious and unworthy of belief. The nature and location of the victim's wounds manifest petitioner's resolve to end the life of the victim.[59] Here, the wound that killed Gonzalo was 12 cm. deep which was directed inward and slightly upward, entering the abdominal cavity, perforating the small intestines and penetrating the pancreas and the abdominal aorta.[60] Petitioner also did not inform the authorities at the earliest opportunity that he wounded Gonzalo in self-defense;[61] neither did he surrender right away the colonial knife which he used in stabbing the victim. He only invoked self-defense when he could no longer conceal his deed. As testified to by Chopchopen, Razon was hesitant at first to go to the place where he was allegedly held up.[62] Then when Chopchopen discovered the body of Gonzalo and while they were bringing him to the hospital, he asked Razon if he was the one who stabbed Gonzalo, to which Razon answered in the negative.[63] He only admitted to having stabbed the victim at the police station after he was investigated by police officers.[64]

Petitioner's claim that he also suffered injuries brought by the attack on him by the victim is belied by the testimonies of police officers Chopchopen and Bumangil who said that they did not see any injury on Razon on the night in question.[65]

With petitioner's failure to prove self-defense, the inescapable conclusion is that he is guilty of homicide as correctly found by the RTC.

As to the damages awarded by the RTC, however, the Court finds that certain modifications need to be made. While not assigned as errors, it is the duty of the Court to correct such errors as may be found in the judgment

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appealed from, since an appeal in a criminal case throws the whole case wide open for review.[66]

The Court notes that the RTC failed to award the heirs of Gonzalo, P50,000.00 as civil indemnity for his death.[67] Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of commission of murder or homicide.[68]

Anent actual damages, the Court resolves to delete the same and in lieu thereof imposes temperate damages in the amount of P25,000.00. This is consistent with the ruling of the Court in People v. Werba,[69] citing People v. Villanueva[70] which held that in instances where actual expenses amounting to less than P25,000.00 are proved during the trial, the award of temperate damages of P25,000.00 is justified in lieu of the actual damages of a lesser amount.[71] In this case, Gonzalo's heirs were only able to present receipts amounting to P4,925.00.[72]

As to moral damages, the RTC correctly awarded the amount of P50,000.00, as the prosecution was able to show that the father of the victim, Benedicto Gonzalo, Sr., suffered mental and emotional anguish due to the untimely death of his son. Gonzalo Sr., who was 74 years old at the time of his testimony, said that he had special affection for his son, not only because he was the youngest among all his children, but also because he was a polio victim. He said that he could not eat and sleep thinking that his son could not have put up a fight due to his physical disability.[73] Indeed, moral damages may be awarded in favor of the heirs of a victim upon sufficient proof of mental anguish, serious anxiety, wounded feelings and similar injury.[74]

The RTC also did not err in awarding P10,000.00 as attorney's fees to the heirs of the victim. As provided for in Art. 2208 (11)[75] of the Civil Code, attorney's fees may be awarded where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In this case the award of attorney's fees is proper as it is borne by the records that the family of the victim hired the services of a private lawyer to prosecute the case.[76]

WHEREFORE, the Decision of the Regional Trial Court, Branch 60, Baguio City, in Criminal Case No. 12245-R, entitled "People of the Philippines v. Edwin Razon y Lucea" is AFFIRMED with MODIFICATION to the effect that petitioner is ordered to pay the heirs of Benedict Kent Gonzalo, Jr. the amount of P50,000.00 as civil indemnity and P25,000.00 as temperate damages in addition to P50,000.00 as moral damages and P10,000.00 as attorney's fees.

SO ORDERED.
Ynares-Santiago, (Chairperson), Chico-Nazario, and Nachura, JJ., concur.

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[1] Through Associate Justice Roberto A. Barrios and concurred in by Associate Justices Ramon Mabutas, Jr. and Bienvenido L. Reyes.; rollo, p. 30.

[2] Id. at 32-35.

[3] Records, p. 416 (RTC Decision, p. 1).

[4] Records, p. 418 (RTC Decision, p. 3).

[5] Records, p. 416 (RTC Decision, p. 1).

[6] Records, p. 417 (RTC Decision pp. 2). See also Records, p. 76 (Autopsy Report, Exh. "D").

[7] Records, p. 419 (RTC Decision, p. 4).

[8] Records, p. 422. (RTC Decision p. 7).

[9] CA rollo, pp. 16-17.

[10] Id. at 19.

[11] Id. at 20-27.

[12] Id. at 30-31.

[13] Id. at 35-36.

[14] Id. at 38-39.

[15] Resolution dated April 5, 1999, addressed to Razon with return card; id. at 41.

[16] Id. at 42.

[17] Id. at 44.

[18] Id. at 45.

[19] Id. at 47.

[20] Id. at 49; Sec. 8 of Rule 124 reads:

> "Dismissal of appeal for abandonment or failure to prosecute. ---The Court of Appeals may, upon motion of the appellee or motu propio and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by counsel de oficio.
>
> The Court of Appeals may also, upon motion of the appellee or motu propio, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal.

[21] Id. at 53-54.

[22] Id. at 79.

[23] Id. at 78-79.

[24] Rollo, p. 21.

[25] Id. at 22-26.

[26] Id. at 51-56.

[27] Id. at 72-77; 82-96; 99-113.

[28] Sajot v. Court of Appeals, 364 Phil. 182, 186 (1999) citing Garbo v. Court of Appeals, 327 Phil. 780, 784 (1996).

[29] Natonton v. Magaway, G.R. No. 147011, March 31, 2006, 486 SCRA 199, 204; Aguam v. Court of Appeals, 388 Phil. 587, 593 (2000).

[30] Sapad v. Court of Appeals, 401 Phil. 478, 483 (2000).

[31] Rollo, p. 12. (CA Resolution dated April 14, 2003).

[32] CA rollo, p. 41, with return card.

[33] Id. at 45, with return card.

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[34] Id. at 46, with return card.

[35] Id. at 49.

[36] Sajot v. Court of Appeals, supra note 28, at 187.

[37] See People v. Abuyen, G.R. No. 77285, September 4, 1992, 213 SCRA 569, 579; People v. Lizada, G.R. Nos. 143468-71, January 24, 2003, 396 SCRA 62, 78; Ongson v. People, G.R. No. 156169, August 12, 2005, 466 SCRA 656, 668.

[38] People v. Tagana, G.R. No. 133027, March 4, 2004, 424 SCRA 620, 634.

[39] Marzonia v. People, G.R No. 153794, June 26, 2006, 492 SCRA 627, 634.

[40] People v. Tagana, supra at 634.

[41] TSN, Edwin Razon, December 12, 1994, p. 6.

[42] People v. Tagana, supra at 634-635. See also Toledo v. People, G.R. No. 158057, September 24, 2004, 439 SCRA 94, 109; People v. Vicente, 452 Phil. 986, 998 (2003).

[43] Toledo v. People, supra at 109.

[44] People v. Catbagan, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 540.

[45] Toledo v. People, supra note 41, at 109; People v. Tagana, supra note 37, at 635; People v. Vicente, supra note 41, at 998.

[46] People v. Catbagan, supra at 557.

[47] People v. Vicente, supra at 998.

[48] Records, p. 420 (RTC Decision, p. 5).

[49] TSN, December 1, 1994, pp. 13-16.

[50] TSN, December 12, 1994, pp. 5-7.

[51] TSN, December 12, 1994, pp. 20-21.

[52] People v. Tagana, supra note 37, at 635; People v. Vicente, supra note 41, at 998.

[53] People v. Vicente, supra at 998.

[54] See People v. Escarlos, 457 Phil. 580, 597 (2003).

[55] People v. Escarlos, supra at 598.

[56] People v. Catbagan, supra note 43 at 557-558.

[57] Records, p. 418 (RTC Decision, p. 3).

[58] TSN, Edwin Razon, December 12, 1994, pp. 7, 17.

[59] See People v. Vicente, supra note 41, at 1002.

[60] Records, p. 76. (Autopsy Report, Exh. "D").

[61] See People v. Vicente, supra note 41, at 1002

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[62] TSN, Francisco Chopchopen, March 16, 1994, p. 5.

[63] Id. at 7.

[64] Id. at 8.

[65] Id. at 30; Samuel Bumangil, May 18, 1994, p. 8.

[66] Ferrer v. People, G.R. No. 143487, February 22, 2006, 483 SCRA 31, 54.

[67] See People v. Escarlos, supra note 53, at 602.

[68] People v. Abatayo, G.R. No. 139456, July 7, 2004, 433 SCRA 562, 582.

[69] G.R. No. 144599, June 9, 2004, 431 SCRA 482, 499.

[70] 456 Phil. 14 (2003).

[71] People v. Werba, supra at 499-500.

[72] This amount is comprised of P4,700.00 which was issued by the Baguio Memorial Chapels, Exh. "N", records, p. 259; P20.00 for transfer permit, Exh. "O", records, p. 241; P5.00 for burial permit, Exh. "M-2", records, p. 238; P200.00 for permit to construct tomb, Exh. "M", records, p. 235.

[73] TSN, Benedicto Gonzalo, Sr., October 19, 1994, pp. 8,11. See also records p. 418, RTC Decision p. 3.

[74] People v. Abatayo, supra note 67, at 582. See also Art. 2217 of the New Civil Code.

[75] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

[76] See Ungsod v. People, G.R. No. 158904, December 16, 2005, 478 SCRA 282, 297.

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