

**RONELO POLO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.***G.R. No. 160541. October 24, 2008*

Ponente: CARPIO, J.

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This is a petition for review[1] of the 16 June 2003 Decision[2] and 12 September 2003 Resolution of the Court of Appeals in CA-G.R. CR No. 25163. The 16 June 2003 Decision affirmed in toto the 4 October 2000 Decision of the Regional Trial Court, Branch 55, Irosin, Sorsogon (trial court), finding petitioner Ronelo Polo (Polo) guilty beyond reasonable doubt of homicide and sentencing him to suffer an indeterminate penalty of 10 years and 1 day of prision mayor maximum, as minimum, to 17 years and 4 months of reclusion temporal medium, as maximum. The Court of Appeals also affirmed the trial court's order for Polo to pay the heirs of the victim Danilo Balisoro (Balisoro) P30,000 as actual damages, P50,000 as indemnity for death, P50,000 as moral damages and to pay the costs. The 12 September 2003 Resolution denied Polo's motion for reconsideration.

On 27 February 1995, Polo was charged with the murder of Balisoro.

Polo pleaded not guilty upon arraignment.

During the trial, prosecution witnesses Chito Leander and Dante Encinares testified that they were on their way home from the dance hall when Polo called Balisoro. They all stopped and Polo ran toward their group with his hands on his back. When Polo was near enough, Polo had a short conversation with Balisoro. Suddenly, Polo hacked Balisoro on the head. Balisoro was brought to the hospital but he later died due to the head injuries he sustained.

Polo admitted hacking Balisoro with a bolo but claimed to have done it in self-defense. Polo said that he witnessed an altercation between Balisoro and his cousin, Romeo Hispano (Romeo), and that he was just trying to help Romeo. Then Roberto Caña came running toward Polo carrying a bladed weapon and Balisoro boxed him twice, hitting him on the cheeks. Polo said that Balisoro pulled out a knife and was about to stab him, but he escaped and ran to his house. Polo said that he got hold of "something," which he later learned was a balisong, and he used it to strike Balisoro. Polo then fled the scene of the crime and met Kagawad Alfredo Cielo who accompanied him when he surrendered to a certain policeman Pantua.

Defense witness Ronaldo Hispano (Ronaldo) said he was the one who witnessed the altercation between his brother Romeo and Balisoro. Ronaldo told Polo of the incident and Polo went after Balisoro to confront him. Ronaldo said that Polo hacked Balisoro because Balisoro was about to stab Polo.

Arlan Ete, another defense witness, corroborated Polo's testimony that Balisoro boxed Polo twice and even attempted to stab him.

The trial court found the testimonies of the prosecution witnesses candid, straightforward and consistent while those of the defense witnesses were declared to be full of inconsistencies. The trial court ruled that Polo's claim of

self-defense did not have factual basis and that Polo failed to prove that there was unlawful aggression on the part of Balisoro. However, the trial court did not appreciate the qualifying circumstances of treachery and evident premeditation because the prosecution failed to establish them with reasonable certainty. The trial court also did not appreciate the mitigating circumstance of voluntary surrender because the records showed that on 27 October 1994, the Municipal Trial Court of Irosin (MTC) issued a warrant of arrest[3] and that it was "duly served."

On 4 October 2000, the trial court rendered its decision, finding Polo guilty of homicide under Article 249 of the Revised Penal Code.

Polo appealed to the Court of Appeals. Polo asked the Court of Appeals to appreciate in his favor the mitigating circumstances of voluntary surrender and sufficient provocation on the part of the offended party immediately preceding the act.

In its 16 June 2003 Decision, the Court of Appeals denied Polo's appeal and affirmed in toto the trial court's decision. The Court of Appeals agreed with the trial court that the prosecution's version was more credible than that of the defense, which was full of inconsistencies and was tailor-made to suit Polo's claim. The Court of Appeals said Polo failed to show that there was sufficient provocation from Balisoro to excite Polo to commit the crime. The Court of Appeals also found Polo's testimony as to the circumstance of his voluntary surrender unclear. The Court of Appeals agreed with the trial court that the duly served warrant of arrest belied Polo's claim of voluntary surrender.

In its 12 September 2003 Resolution, the Court of Appeals denied Polo's motion for reconsideration.

Hence, this petition.

We find the petition without merit. When the trial court's factual findings are affirmed by the Court of Appeals, such findings are generally conclusive and binding upon the Court.[4] The Court of Appeals was correct in not appreciating the mitigating circumstance of sufficient provocation in Polo's favor. In this case, there was no showing that Balisoro provoked Polo. If there was indeed provocation from Balisoro to merit the attack, it was not adequate to excite Polo to commit a wrong, which must be proportionate in gravity. Also, a sufficient interval of time had already elapsed giving Polo time to regain his reason and exercise self-control.

As to the mitigating circumstance of voluntary surrender, we agree with the Court of Appeals that between Polo's self-serving testimony and the duly served warrant of arrest, the latter deserves more credence. If Polo surrendered to policeman Pantua on 23 October 1994, then the MTC should not have issued a warrant of arrest on 27 October 1994. Where the accused surrendered only after the warrant of arrest was served on him, it cannot be considered as voluntary surrender.

However, we delete the award of actual damages. To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable.[5] In this case, the prosecution presented receipts amounting to only P12,026.60.[6] However, in accordance with *People v. Villanueva*,[7] we award P25,000 as temperate damages in lieu of the actual damages of a lesser amount.

The trial court and the Court of Appeals also overlooked the award of loss of earning capacity despite the testimony of Avelina Balisoro (Avelina) on her husband's income. The absence of documentary evidence to substantiate the claim for the loss will not preclude recovery of such loss.[8] Avelina testified that her husband earned P6,400[9] a year from stripping abaca and P18,000[10] a year from planting rice. The defense did not object to Avelina's testimony on her husband's earning capacity. The rule is that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[11] It was also

established that at the time of his death, Balisoro was 31 years old.[12] Loss of earning capacity is computed based on the following formula:

Net Earning

=

Life Expectancy x Gross Annual Income

- Living Expenses

Capacity

[2/3 (80-age at death)]

**(GAI)**

(50% of GAI

=

2 (80-31)

3

x GAI

- [50% of GAI]

=

2 (49)

3

x P24,400

**- P12,200**

=

98

3

x P12,200

=

32.67

x P12,200

Net Earning Capacity = P398,574

WHEREFORE, we DENY the petition and AFFIRM the 16 June 2003 Decision and 12 September 2003 Resolution of the Court of Appeals in CA-G.R. CR No. 25163 finding Ronelo Polo guilty beyond reasonable doubt of homicide with the MODIFICATION that Ronelo Polo is ordered to pay the heirs of Danilo Balisoro as follows: P25,000 for temperate damages and P398,574 for loss of earning capacity. We DELETE the award of actual damages.

**SO ORDERED.**

Corona, Azcuna, Leonardo-De Castro, and Brion[\*\*], JJ., concur.

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[\*] Per Special Order No. 527.

[\*\*] As replacement of Chief Justice Reynato S. Puno who is on official leave per Special Order No. 528.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Romeo A. Brawner with Associate Justices Eliezer R. de los Santos and Regalado E. Maambong, concurring.

[3] Records, p. 7.

[4] Danofrata v. People, 458 Phil. 1018 (2003).

[5] People v. Tigle, 465 Phil. 368 (2004).

[6] Exhibits "B" to "B-34," records, p. 114.

[7] 456 Phil. 14 (2003).

[8] People v. Tigle, supra.

[9] Avelina testified that her husband earned P800 a week for stripping abaca, which Balisoro undertook for eight weeks in a year.

[10] Avelina testified that her husband was paid 30 sacks of rice per harvest and that there are two harvest periods in a year. Avelina also said that a sack of rice was valued at P300.

[11] People v. Tigle, supra.

[12] Records, p. 18.

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