

ROBERTO LICYAYO, Petitioner, vs. PEOPLE OF THE PHILIPPINES, Respondent.

G.R. No. 169425. March 04, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In this Petition for Review on Certiorari under Rule 45 of the Rules of Court,[1] petitioner Roberto Licyayo prays for the reversal of the Decision dated 6 May 2005[2] and Resolution dated 12 August 2005[3] of the Court of Appeals in CA-G.R. CR No. 27359, affirming with modification the Decision[4] dated 20 February 2003 of the Regional Trial Court (RTC) of Lagawe, Ifugao, Branch 14, in Criminal Cases No. 819 and 820, convicting petitioner of Homicide under Article 249 of the Revised Penal Code in Criminal Case No. 819 while dismissing Criminal Case No. 820 for Direct Assault as regards him.[5]

The factual antecedents are as follows:

On 1 February 1993, an Information[6] in Criminal Case No. 8a was filed before the RTC charging petitioner, his brother Aron Licyayo (Aron), Paul Baguilat (Paul) and Oliver Buyayo (Oliver) with Homicide under Article 249 of the Revised Penal Code quoted as follows:

The undersigned Provincial Prosecutor, hereby accuses ROBERTO LICYAYO, OLIVER BUYAYO, ARON LICYAYO, and PAUL BAGUILAT, of the crime of HOMICIDE and committed as follows:

That on or about the 16th day of February, 1992, in the Municipality of Kiangnan, Ifugao, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another and with intent to kill, DID then and there willfully, unlawfully and feloniously attack, assault one Rufino Guay, stabbing him with the use of a double bladed weapon, thereby inflicting upon the victim several stab wounds which directly caused his death.

On 11 May 1993, an Amended Information[7] in Criminal Case No. 820 was filed before the RTC accusing petitioner of Direct Assault under Article 148 of the Revised Penal Code, viz:

That on or about the 16[th] of February 1992, in the Municipality of Kiangnan, Ifugao, and within the jurisdiction of this Honorable Court, the above-named accused, DID then and there willfully, unlawfully and feloniously attack and assault PO3 Miguel Buyayo with the use of a bladed weapon while the victim was in the performance of his official duties as a policeman which fact was known to the accused.

Subsequently, these cases were consolidated for joint trial. In Criminal Case No. 819, petitioner, Aron and Paul pleaded “Not Guilty” to the charge of homicide,[8] while the other accused, Oliver, was not arraigned.[9] With respect to Criminal Case No. 820, petitioner was not arraigned.[10] Thereafter, trial on the merits ensued.

The prosecution presented as witnesses three members of the Philippine National Police (PNP), Kiangnan, Ifugao, namely, Joseph Danglay (Officer Danglay), Miguel Buyayo (Officer Buyayo) and Alfonso Baguilat (Officer Baguilat); and three other persons namely, Jeffrey Malingan (Jeffrey), Jimmy Guay (Jimmy), and Jose Guay (Jose). Their testimonies, woven together, bear the following:

On 16 February 1992, victim Rufino Guay (Rufino), along with his friends, Jeffrey and a certain Joel Dumangeng (Joel) attended a wedding at Mabbalat, Kiangnan, Ifugao. Petitioner, together with his friends, Paul and Oliver, were also present at the same wedding. After the wedding reception, Rufino, Jeffrey and Joel went to Natama's Store at the Kiangnan Public Market and ordered two bottles of gin. While the three were drinking gin at the said store, petitioner, Paul and Oliver arrived and likewise ordered bottles of gin. Later, petitioner, Paul and Oliver left the store. Subsequently, Rufino, Jeffrey and Joel likewise adjourned their drinking session and left the store.[11]

Rufino, Jeffrey and Joel dropped by at Famorca's Store. Petitioner and his brother, Aron, as well as Paul and Oliver, were also present therein. While Jeffrey was talking to the store's owner, Larry Famorca (Larry), a brawl suddenly occurred between Rufino and Aron. As a consequence thereof, Rufino fell to the ground. Aron thereafter placed himself on top of Rufino and punched the latter several times. Jeffrey approached the two and tried to pacify them. Paul entered the scene and punched Jeffrey on the head. Thereupon, a scuffle followed.[12]

Officers Danglay, Buyayo and Baguilat were on their way home from the Kiangnan Police Station when they heard some individuals calling for police assistance regarding the commotion. The three officers rushed to the scene. Upon arriving thereat, they saw petitioner holding a six-inch double-bladed knife and walking towards Rufino and Aron who were then wrestling with each other. Officer Buyayo, then wearing only civilian clothes and unarmed, approached petitioner and held the latter's back collar to prevent him from joining the fray. Petitioner turned around, faced Officer Buyayo, and tried to stab the latter but he missed. Officer Buyayo retreated. The officers introduced themselves to petitioner as policemen and pleaded with him to put down the knife. Petitioner ignored the officers' pleas.[13]

Afterwards, petitioner approached Rufino, who was then wrestling with Paul, and stabbed Rufino in different parts of the body.[14] Officer Baguilat fired a warning shot while Officer Danglay immediately pounced on petitioner and disarmed the latter.[15] Petitioner was brought to the Kiangnan Police Station while Rufino was taken to a nearby hospital where he later died due to stab wounds.[16]

The prosecution also presented documentary and object evidence to bolster the testimonies of its witnesses, to wit: (1) sworn statements of Officer Danglay, Officer Buyayo, Officer Baguilat, Jeffrey, Jimmy, Jose and Arsenio;[17] (2) death certificate of Rufino;[18] (3) certification from the Ifugao General Hospital stating that Rufino sustained several stab wounds which directly caused his death;[19] and (4) the knife used by the petitioner in stabbing Rufino.[20]

For its part, the defense proffered the testimonies of petitioner and his corroborating witnesses -- Daniel Cayong (Daniel), Aron, and Paul -- to refute the foregoing accusations. Their version of the incident is as follows:

On the morning of 16 February 1992, petitioner attended a wedding at Mabbalat, Kiangnan, Ifugao. After the wedding, petitioner met Paul and they proceeded to the Kiangnan Public Market where they chanced on Oliver, a certain Kimayong and Fernando who invited them for a drink in one of the stores near the market. Later, Rufino, Jeffrey and Joel entered the store where petitioner's group was drinking and occupied a separate table. Jeffrey and Joel approached petitioner's group and sat at their table. Jeffrey shook and pressed hard the hand of Oliver. The storeowner signalled petitioner's group to pay its bills and leave. Petitioner brought out his wallet to pay their bills but Jeffrey, who was still holding and pressing Oliver's hand, told him to buy another bottle. Petitioner pleaded with Jeffrey to let go of Oliver's hand because the latter is his friend. Jeffrey, however, warned him not to interfere if he did not want to get involved. Petitioner glanced at the store's door and saw Rufino standing therein. Thereafter, Jimmy passed by in front of the store and made a signal to Rufino, Jeffrey and Joel. Petitioner, Paul and Oliver paid their bills, left the store and proceeded to Sakai Store.[21]

Subsequently, Jeffrey and a companion went to Famorca's Store and saw Aron and Daniel seated in one of the

benches outside the store. Jeffrey then told his companion “Can you tackle his brother?” Sensing that he was the brother being referred to by Jeffrey and a trouble might occur, Aron went inside the store but Jeffrey followed him. Thus, Aron went outside the store and sat on one of the benches nearby. Afterwards, Rufino arrived at the store and approached Aron. Rufino held the collar of Aron’s shirt and punched the latter on the left cheek. Jeffrey also approached Aron and grabbed the latter’s arm. Aron fought back but he fell to the ground.[22]

Daniel immediately proceeded to Sakai Store and told petitioner that Aron was being mauled. Petitioner went to the scene and saw Rufino and Jeffrey punching Aron who was sprawled on the ground. Petitioner pushed Jeffrey away but the latter’s other companions suddenly arrived and started hitting him. Petitioner fought back but he was overpowered. Petitioner cannot recall anymore the subsequent events that transpired.[23]

After trial, the RTC rendered a Decision dated 20 February 2003, finding petitioner guilty of homicide in Criminal Case No. 819. It acquitted Aron and Paul because the prosecution failed to prove the existence of conspiracy. It did not rule on the liability of Oliver because he was not arraigned in the said case. Further, it dismissed Criminal Case No. 820 for direct assault because petitioner was not arraigned therein.[24]

The dispositive portion of the decision in Criminal Case No. 819 reads:

WHEREFORE, premises considered, accused Roberto Licayao is hereby found GUILTY beyond reasonable doubt of the crime of Homicide under Article 249 of the Revised Penal Code. Applying the provisions of the Indeterminate Sentence Law and there being no aggravating circumstances, he is hereby sentenced to suffer the penalty of 8 years of prision mayor as minimum to 15 years of reclusion temporal medium as maximum.

Further, accused is hereby ordered to pay the victim’s heirs the amount of P50,000.00 as civil indemnity for the death of Rufino Guay. “Per prevailing jurisprudence, death indemnity is fixed in the sum of P50,000.00. This kind of civil indemnity is separate and distinct from other forms of indemnity for damages and is automatically awarded without need of further proof other than the fact of death and that the accused is responsible therefore.” (People v. Julius Kinok, G.R. No. 104629, November 13, 2001; Case Digest of Supreme Court Decisions; vol. 53, No. 2).

Likewise, accused is ordered to pay the victim’s heirs another P50,000.00 as moral damages. “This award is mandatory and does not require proof other than the death of the victim.” (People v. Mariano Pascua, Jr., G.R. No. 130963, November 27, 2001; Case Digest of Supreme Court Decisions; vol. 53, No. 2).

But the Court cannot award actual damages as testified to by the victim’s father, Jose Guay, in the amount of P12,000.00 since the same were not covered by receipts. The same goes true with the alleged annual income of the deceased in the amount of P30,000.00. “Well-entrenched is the doctrine that actual, compensatory and consequential damages must be proved, and cannot be presumed.” (Ibid.).[25]

Petitioner appealed to the Court of Appeals. On 6 May 2005, the appellate court promulgated its Decision affirming with modifications the RTC decision. In addition to the civil indemnity and moral damages awarded by the RTC, the appellate court also ordered petitioner to pay for the loss of earning capacity of Rufino in the amount of P580,050.00 and temperate damages in the amount of P25,000.00. Thus:

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court, Branch 14 of Lagawe, Ifugao in Criminal Cases Nos. 819 and 820 is hereby AFFIRMED with MODIFICATION as to the award of damages, in that accused- appellant is also ordered to pay the victim’s heirs the following:

(a) the amount of P25,000.00 as temperate damages; and

(b) the amount of P580,050.00 for lost earnings.[26]

Petitioner filed a Motion for Reconsideration which the appellate court denied. Hence, petitioner elevated the instant case before us on the following grounds:

I.

THE INFORMATION FILED IS NOT SUFFICIENT AS IT DID NOT SPECIFICALLY CHARGED PETITIONER FOR THE CRIME OF "HOMICIDE" DEFINED AND PENALIZED UNDER ARTICLE 249 OF THE REVISED PENAL CODE; HENCE, PETITIONER COULD NOT BE VALIDLY CONVICTED FOR SAID CRIME.

II.

GRANTING THAT THE INFORMATION IS SUFFICIENT, PETITIONER IS ENTITLED TO THE MITIGATING CIRCUMSTANCES OF SUFFICIENT PROVOCATION AND INTOXICATION.[27]

Anent the first issue, petitioner points out that the Information does not specifically mention the law which he allegedly violated and for which he was charged. Although the information accuses him of the crime of homicide, it does not categorically state that he is being charged with homicide, as defined and penalized under Article 249 of the Revised Penal Code. According to him, the information should have been more explicit by stating that he is being indicted for homicide as defined and penalized under Article 249 of the Revised Penal Code. He argues that the specification in the information of the law violated is necessary to enable him to adequately prepare for his defense, and that to convict him under such defective information would violate his constitutional and statutory right to be informed of the nature and cause of the accusation against him.[28]

Section 6, Rule 110 of the Revised Rules of Criminal Procedure provides that an information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

With particular reference to the designation of the offense, Section 8, Rule 110 of the Revised Rules of Criminal Procedure merely directs that the information must state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances.

The information in the instant case contains the foregoing required statements. The information mentions the name of petitioner as the accused, the name of Rufino as the offended party, the date and place of the commission of the crime, and designates the crime committed by petitioner as homicide. It also alleges the act of petitioner constituting homicide which is the unlawful stabbing of Rufino with the use of a bladed weapon.[29]

The fact that the information does not specifically mention Article 249 of the Revised Penal Code as the law which defines and penalizes homicide, does not make it defective. There is nothing in the afore-quoted Rules which specifically requires that the information must state the particular law under which the accused is charged in order for it to be considered sufficient and valid. What the Rules merely require, among other things, is that the information must designate the offense charged and aver the acts constituting it, which in this case, were obviously done. *People v. Gatchalian*[30] categorically stated that there is no law which requires that in order that an accused may be convicted, the specific provision which penalizes the act charged be mentioned in the information.

Besides, it should be stressed that the character of the crime is determined neither by the caption or preamble of the information nor by the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the recital of the ultimate facts and circumstances in the information.[31] The sufficiency of an information is not negated by an incomplete or defective designation of the crime in the caption or other parts of the information but by the narration of facts and circumstances which adequately depicts a crime and sufficiently apprises the accused of the nature and cause of the accusation against him.[32]

Although the information herein does not specifically mention Article 249 of the Revised Penal Code as the law

which defines and penalizes homicide, it, nonetheless, narrates that petitioner stabbed Rufino with a bladed weapon during the incident which caused the latter's death. The foregoing allegation unmistakably refers to homicide under Article 249 of the Revised Penal Code which is the unlawful killing of any person without any attendant circumstance that will qualify it as murder, parricide or infanticide.

Apropos the second issue, petitioner alleges that Rufino started the scuffle by punching Aron on the left cheek; that by such act, Rufino had given him sufficient provocation; and that it was the pitiful sight of Aron lying on the ground and being beaten by Rufino and Jeffrey which caused him to stab Rufino.[33] Petitioner further claims that he was intoxicated during the incident; that this fact was affirmed by Officers Danglay and Baguilat in their court testimonies; that his intoxication was not subsequent to any plan to commit a felony because the encounter between him and Rufino was merely accidental and there was no previous agreement to harm Rufino; that prior to the incident, he met old friends and had a drink with them; that such is a mere custom or practice among Filipinos; and that his intoxication is not habitual.[34]

Under paragraph 4, Article 13 of the Revised Penal Code, a criminal liability may be mitigated if there was sufficient provocation on the part of the offended party which immediately preceded the act complained of. To avail oneself of this mitigating circumstance, it must be duly proven that the alleged provocation originated from the offended party.[35]

The records do not sufficiently establish who between Rufino and Aron started the brawl which resulted in the stabbing of Rufino by petitioner. What is evident is that Rufino and Aron suddenly and unexpectedly grappled during the incident.[36] As aptly observed by the RTC:

From the facts of the case earlier discussed, the fight between Rufino Guay and Aron Licyayo was so sudden. In his defense, Aron Licyayo in his direct examination testified though self-serving, that it was victim Rufino Guay who punched him first and so he fought back.

Nevertheless, this claim of unlawful aggression is belied during his cross-examination:

Q.

You claim, Mr.Witness, that on February 16, 1992, you did not know the late Rufino Guay?

A.

Yes, Sir.

Q.

You therefore cannot imagine why he should assault you since you did not know each other?

A.

None.

Q.

You never had any misunderstanding or altercation prior to February 16, 1992?

A.

None.

Q.

And all of a sudden, in the afternoon of February 16, 1992 you fought each other and you being bigger than Rufino Guay, you are on top of him, is that right?

A.

Yes, sir.

Q.

And you delivered several blows when you were on top of him?

A.

No because they were already many and they held me.

Q.

How many blows did you deliver when you were on top of him before the others came?

A.

I do not know how many.

Q.

Was it more than ten?

A.

No.

Q.

Was it more than fifteen?

A.

I do not know.

Q.

Why do you not know, Mr. Witness, were you drunk at that time?

A.

No, I was not. (TSN, pp. 82-83, Crim. Case No. 820).

Granting arguendo that there was unlawful aggression on the part of the victim, it is obvious that immediately he became the underdog, literally even. He was easily overpowered by the bigger and sober Aron Licayao, who unfortunately, does not know how to count. With this development, the situation changed. The aggressor became the attacked and the attacked, the aggressor.

But even from the testimonies of both the prosecution and the defense witnesses, the former (prosecution) prevailed in convincing this Court that unlawful aggression was not started by any of the protagonists but that a sudden fight was started by Rufino Guay and accused Aron Licayao. This is verifiable from the testimony of the fourth prosecution witness, Jeffrey Malingan.

Defense on the other hand, tried to show that it was the victim who started the unlawful aggression through witnesses Daniel Cayong and accused Aron Licayao. They failed miserably, however, to show this. Daniel Cayong, in his direct examination narrated that it was not only Rufino Guay who started the trouble but rather he and his two companions Joel Dumangeng and Jeffrey Malingan took hold of Aron Licayao and started punching him. The latter witness, as shown earlier, showed his bias by inculcating the deceased only to contradict himself that the fight suddenly started when he and the deceased grappled.[37]

The rule is that the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[38]

Since it was not convincingly shown that the alleged provocation originated from Rufino, the mitigating circumstance of sufficient provocation should not be appreciated in favor of petitioner. We have held that where there is no evidence as to how the quarrel arose, the accused is not entitled to the mitigating circumstance of sufficient provocation.[39]

For intoxication to be considered as a mitigating circumstance, it must be shown that the intoxication impaired the

willpower of the accused and that he did not know what he was doing or could not comprehend the wrongfulness of his acts.[40] The person pleading intoxication must prove that he took such quantity of alcoholic beverage, prior to the commission of the crime, as would blur his reason.[41]

In the case at bar, there is no plausible evidence showing that the quantity of liquor taken by petitioner was of such quantity as to affect his mental faculties. On the contrary, the fact that petitioner could recall the details that transpired during and after his drinking session with friends is the best proof that he knew what he was doing during the incident. His vivid narration that he had a confrontation with Rufino, Jeffrey and Joel during the drinking session; that Daniel approached and told him that Aron was being mauled; that he immediately went to the scene and saw Aron being beaten by Rufino and Jeffrey; that he pushed Jeffrey away from Aron; that he was allegedly beaten by the companions of Jeffrey; and that he fought back but was allegedly overpowered --- all point to the conclusion that petitioner had complete control of his mind during the incident.[42]

Petitioner cannot avail himself of the mitigating circumstance of intoxication merely on the testimonies of the prosecution witnesses that he was drunk during the incident.[43] Such testimonies do not warrant a conclusion that the degree of petitioner's intoxication had affected his faculties.[44] There must be convincing proof of the nature and effect of his intoxication which petitioner failed to adduce in the present case.[45]

We now go to the propriety of the sentence imposed on petitioner and the damages awarded to the heirs of Rufino.

Homicide is punishable by reclusion temporal.[46] There being no mitigating or aggravating circumstance proven in the case at bar, the penalty should be applied in its medium period of 14 years, 8 months and 1 day to 17 years and 4 months.[47] Applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than reclusion temporal, which is prision mayor (six years and one day to 12 years). We found the indeterminate sentence of eight years of prision mayor as minimum, to 15 years of reclusion temporal as maximum, imposed by the RTC, and affirmed by the Court of Appeals, sufficient.

The Court of Appeals correctly awarded civil indemnity in the amount of P50,000.00 and moral damages amounting to P50,000.00 in line with prevailing jurisprudence.[48]

As to actual damages, Jose testified that his family incurred expenses for the hospitalization and funeral of Rufino.[49] However, since no documentary evidence was proffered to support this claim, it cannot be awarded.[50] Nonetheless, the award of P25,000.00 in temperate damages in homicide or murder cases is proper when no evidence of the said expenses is presented in the trial court.[51] Under Article 2224 of the Civil Code,[52] temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.[53] Thus, the award of temperate damages in the amount of P25,000.00 by the Court of Appeals is in order.

We also agree with the Court of Appeals that the heirs of Rufino should be indemnified for loss of earning capacity pursuant to Article 2206 of the New Civil Code[54] in the amount of P580,050.00. In accordance with current jurisprudence,[55] the formula for the indemnification for loss of earning capacity is:

Net Earning Capacity

– Living Expenses = Life Expectancy x Gross Annual Income (GAI)

= $\frac{2}{3}(80 - \text{age of deceased}) \times (\text{GAI} - 50\% \text{ of GAI})$

Generally, documentary evidence is necessary for the purpose of proving the victim's annual income. As an exception, testimonial evidence suffices if the victim was either: (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.[56]

Rufino falls under these exceptions. Jose testified that Rufino was earning an average annual gross income of P30,000.00 from gardening and cultivating ricefields.[57] Rufino was 22 years old at the time of his death.[58]

We have held that in the absence of proof as regards the victim's living expenses, his net income is deemed to be 50 percent of his gross income.[59]

Applying the above-stated formula, the indemnity for the loss of earning capacity of Rufino is P580,050.00, computed as follows:

$$\begin{aligned}\text{Net earning capacity} &= 2/3 (58) \times (30,000.00 - P15,000.00) \\ &= 38.67 \times P15,000.00 \\ &= P580,050.00\end{aligned}$$

WHEREFORE, the petition is hereby DENIED. The Decision dated 6 May 2005 and Resolution dated 12 August 2005 of the Court of Appeals in CA-G.R. CR No. 27359 is hereby AFFIRMED in toto. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 8-16.

[2] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Eliezer R. de Los Santos and Arcangelita Romilla-Lontok, concurring; rollo, pp. 21-33.

[3] Id. at 35-36.

[4] Records, pp. 199-215.

[5] CA rollo, pp. 199-215.

[6] Records, p. 1.

[7] Id. at 90.

[8] Id. at 91.

[9] Oliver was released from jail by Rafael Baguilat, then Officer-in-Charge of the Office of the Provincial Warden, Kiangnan, Ifugao, to visit a sick relative in Jones, Isabela. Since then, Oliver has not returned to Kiangnan, Ifugao, for arraignment and trial in Criminal Case No. 819 for Homicide. (Records p. 198.)

[10] The records do not show why petitioner was not arraigned in Criminal Case No. 820 for Direct Assault.

[11] TSN, 12 May 1993, pp. 1-4.

[12] Id. at 4-6.

- [13] TSN, 11 May 1993, pp. 1-4.
- [14] Id. at 4.
- [15] TSN, 11 May 1993, p. 16.
- [16] TSN, 12 May 1993, pp. 6-7.
- [17] Records, pp. 3-14.
- [18] Id. at 15.
- [19] Id. at 16.
- [20] Id. at 101.
- [21] TSN, 7 October 1993, pp. 1-8.
- [22] TSN, 7 December 1993, pp. 1-4.
- [23] TSN, 7 October 1993, pp. 8-12.
- [24] Id.
- [25] Records, pp. 214-215.
- [26] Rollo, pp. 32-33.
- [27] Id. at 11 & 14.
- [28] Id. at 11-13.
- [29] Records, p. 1.
- [30] 104 Phil. 664, 675 (1958).
- [31] Olivarez v. Court of Appeals, G.R. No. 163866, 29 July 2005, 465 SCRA 465, 482; People v. Malngan, G.R. No. 170470, 26 September 2006, 503 SCRA 294, 330-331.
- [32] Id.
- [33] Rollo, pp. 14-16.
- [34] Id.
- [35] Bacar v. De Guzman, Jr., 338 Phil. 41, 48 (1997).
- [36] TSN, 12 May 1993, p. 5.
- [37] Records, pp. 208-210.
- [38] People v. Santiago, G.R. No. 175326, 28 November 2007, pp. 15-16.
- [39] Austria v. Court of Appeals, 339 Phil. 484, 490 (1997); United States v. Fitzgerald, 2 Phil. 419, 422-423 (1903).
- [40] People v. Nabong, G.R. No. 172324, 3 April 2007, 520 SCRA 437, 456.
- [41] Id.

[42] TSN, 7 October 1993, pp. 1-8.

[43] *People v. Pinca*, 376 Phil. 377, 405 (1999); *People v. Belaro*, 367 Phil. 90, 111 (1999); *People v. Ventura*, G.R. No. 90015, 10 April 1992, 208 SCRA 55, 61-62.

[44] *Id.*

[45] *People v. Pinca*, *supra* note 43.

[46] Article 249 of the Revised Penal Code.

[47] Article 64, paragraph 1, of the Revised Penal Code.

[48] *People v. Tabuelog*, G.R. No. 178059, 22 January 2008; *People v. Ducabo*, G.R. No. 175594, 28 September 2007; *Tuburan v. People*, G.R. No. 152618, 12 August 2004, 436 SCRA 327, 335.

[49] TSN, 3 August 1993.

[50] *People v. Tabuelog* and *People v. Ducabo*, *supra* note 48.

[51] *Id.*

[52] New Civil Code, Article 2224: Temperate or moderate damages x x x may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case be proved with certainty.

[53] *Id.*

[54] New Civil Code, Article 2206: The amount of damages for death caused by a crime or quasi-delict shall be x x x in addition: (1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter x x x.

[55] *People v. Batin*, G.R. No. 177223, 28 November 2007; *Manaban v. Court of Appeals*, G.R. No. 150723, 11 July 2006, 494 SCRA 503, 525.

[56] *People v. Foncardas*, 466 Phil. 992, 1013 (2004).

[57] TSN, 3 August 1993, pp. 4-5.

[58] *Records*, p. 15.

[59] *People v. Napalit*, 444 Phil. 793, 810 (2003).

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