

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANUEL DELPINO, ACCUSED-APPELLANT.

G.R. No. 171453. June 18, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 01513 affirming, with modification, the Decision[2] of the Regional Trial Court of Sorsogon, Sorsogon, Branch 52, in Criminal Case No. 3534, entitled "People of the Philippines v. Manuel Delpino and John Doe."

The Information[3] dated January 26, 1994 charged accused-appellant Manuel Delpino and one John Doe of Murder for the death of Gabriel Lorica y Canon, the accusatory portion of which reads:

That on or about the 16[th] day of December, 1993, in the municipality of Sorsogon, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a short firearm, with intent to kill and with treachery and evident premeditation, did then and there, willfully, unlawfully, and feloniously, shot one Gabriel Lorica, thereby inflicting upon the latter mortal injury which directly caused his death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.

Upon arraignment on May 10, 1994, the accused pleaded "not guilty" to the crime charged.[4] The case thereafter proceeded to trial.

The prosecution presented Mark Lorica,[5] the seven (7)-year old[6] son of the victim, Marilyn Lorica,[7] the victim's wife, and Dr. Myrna Listanco,[8] the Municipal Health Officer of Sorsogon, who conducted an autopsy on the body of the victim. The facts as alleged in the Brief for the appellees filed by the Solicitor General summarized the case as follows:

On December 16, 1993, around 10:00 p.m., Mark Lorica (principal witness) and his father Gabriel (victim) were watching TV inside their house in Sampaloc, Sorsogon, Sorsogon, when they heard a knock at the door (TSN, August 30, 1994, p. 20). The victim asked who was knocking, but no one answered (Ibid.). The victim opened the door, and while he was stooping down to get his slippers, Manuel Delpino (appellant), armed with a short firearm, shot him on his neck (Ibid., p. 21). When the victim fell down, appellant approached him and verified whether he was already dead (Ibid., p. 11).

Mark tried to sneak to his aunt's house but failed because the culprit remained at the place. He returned to their house and waited for his mother who was still working at Philocean (Ibid., p. 12). When his mother arrived at 10:00 p.m., he told her about the incident (TSN, February 21, 1996, p. 5).

The family of the victim spent P10,000.00 for his wake, burial and interment.[9]

On the other hand, the defense presented the accused-appellant[10] and Oscar Lanuza (Lanuza),[11] who corroborated his testimony. Their respective testimonies were summarized in the Brief for the Appellant, to wit:

Manuel Delpino denied that he was the one who shot and killed Gabriel Lorica. He testified that on December 16, 1993 at about 10:00 o'clock in the evening, he and Lanuza and Winnie were inside the JB Line Terminal at Magsaysay St., Sorsogon, Sorsogon washing buses. They started washing buses at about 7:00 o'clock in the evening and finished at 1:00 o'clock in the morning. That he did not leave the JB Line Terminal from the start up to the time he finished washing all the buses in the terminal. They washed 18 buses and it took them at least ½ hour to wash one bus.

Oscar Lanuza corroborated the testimony of Manuel Delpino. He further testified that he and the accused worked from 7:00 o'clock in the evening to past 12:00 midnight on December 16, 1993 inside the JB Line Terminal. That Manuel Delpino did not leave the place because he was beside him sleeping and it was a rainy night. He was surprised why Manuel Delpino was implicated in the killing of Gabriel Lorica when he was with him washing JB Line buses that evening of December 16, 1993.[12]

On March 2, 1998, the trial court rendered a Decision finding the accused-appellant guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused Manuel Delpino guilty beyond reasonable doubt of the crime of Murder and there being no aggravating and mitigating circumstances, hereby sentences the accused to suffer imprisonment of reclusion perpetua and hereby ordered (sic) him to pay the heirs of Gabriel Lorica the amount of P10,000.00 for actual damages incurred during the wake and to indemnify the heirs of Gabriel Lorica the amount of P50,000.00 as civil indemnity without subsidiary imprisonment in case of insolvency and to pay the cost. The accused being a detention prisoner in the service of his sentence his detention shall be fully credited.

SO ORDERED.[13]

The case, which was elevated by the accused to this Court pursuant to Article VIII, Sec. 5 (d) (2) of the Philippine Constitution,[14] was transferred to the CA in the Resolution dated October 6, 2004,[15] conformably with the decision in *People of the Philippines v. Efren Mateo y Garcia*.[16]

On December 19, 2005, the CA rendered a Decision[17] affirming, with modification, the appealed decision. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is DISMISSED. The assailed decision of the court a quo is AFFIRMED with the MODIFICATION that the accused-appellant is ordered to pay the heirs of the victim Gabriel Lorica the amount of P50,000.00 as moral damages, in addition to the P50,000.00 civil indemnity and P10,000.00 actual damages awarded by the trial court.

Costs against the accused-appellant.

SO ORDERED.[18]

On February 27, 2006, the CA elevated the records of the case to this Court in view of the accused-appellant's Notice of Appeal[19] dated January 5, 2006.

In their respective Manifestations,[20] accused-appellant and the Solicitor General informed the Court that they will no longer file a supplemental brief, apart from their appellant's brief and appellee's brief earlier filed with this Court.

The crucial issue raised by accused-appellant pertains solely to the credibility of the prosecution witnesses, particularly the positive identification of accused-appellant as the assailant as against his defenses of denial and alibi.

Accused-appellant insists that at the time of the incident, he was inside the JB Line Terminal on Magsaysay St., Sorsogon, Sorsogon, washing buses. He testified that he was with Lanuza. The latter also testified in court and

corroborated accused-appellant's testimony that they were together that entire evening. The accused-appellant testimony narrated that from 7:00 p.m. until 1:00 a.m., he and Lanuza were busy washing buses at the terminal.[21] Lanuza further supplied that the accused-appellant did not leave the place as they even slept there.[22] Accused-appellant contends that since he was able to prove that he was somewhere else at the time of the incident, he should be acquitted of the crime charged.

In refutation of the accused-appellant's arguments, the prosecution asseverates that alibi cannot prevail over the positive identification of the accused-appellant as the culprit. Besides, for the defense of alibi to prosper, it must be so convincing as to preclude any doubt that the accused-appellant could not have been physically present at the crime scene at the time of the incident. The Solicitor General held that the accused-appellant failed to discharge this burden.

As culled from his testimony, accused-appellant was at the JB Line Terminal washing buses on the alleged time and date of the incident. We note, however, that during the trial, it was also established that the said terminal was so near to the victim's house that the distance of the two could be negotiated by walking in ten to twenty minutes. Considering the proximity of the bus terminal to the place of the crime, accused-appellant failed to satisfy the requirement of physical impossibility. We quote the trial court's observation in this regard:

The Court has personal knowledge that the distance from the house of the victim to the JB Lines Terminal can be negotiated by walking in a matter of ten to twenty minutes, granting that they in fact worked in that evening of December 16, 1993 washing buses.[23]

To establish alibi, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime.[24] Physical impossibility "refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places." [25] In the case at bar, accused appellant failed to satisfy the said requisites, especially the second. It was shown during the trial that it would take the accused ten minutes to walk from the JB Line Terminal to the house of the victim.[26] Besides, in going home, he would have to pass by the house of the victim.[27]

Alibi will not prevail if the accused was positively identified by the witness. As here, prosecution witness Mark Lorica readily pointed to the accused-appellant as the one who shot his father. He was candid in his testimony and he was able to pinpoint the accused-appellant in open court, thus:

q:

Who is your father, Mark?

a:

Gabriel Lorica, sir.

q:

Do you know where he is now?

a:

Yes, sir.

q:

Where is he now at present?

a:

He is in the cemetery.

q:

Why is he or your father in the cemetery?

a:

He is already dead.

q:

Do you know the cause of his death?

a:

Yes, sir.

q:

What was the cause of his death?

a:

He was shot.

q:

Who shot your father, if you know?

a:

Manuel Delpino.

q:

When you said Manuel, you are referring to Manuel Delpino the accused in this case?

a:

Yes, sir.

q:

If he is around, will you be able to identify Manuel Delpino?

a:

Yes, sir.

q:

Please do so?

a:

That person there (witness pointing to a man inside the courtroom who identified himself as Manuel Delpino.)(28]

The Court has held that a witness is not incompetent to give a testimony simply because he or she is of tender age.

The requirements of a child's competence as a witness are: (1) capacity of observation; (2) capacity of recollection; and (3) capacity of communication.[29] It is the degree of a child's intelligence that determines the child's competence as a witness. If the witness is sufficiently mature to receive correct impressions by his senses, to recollect and narrate intelligently, and to appreciate the moral duty to tell the truth, he is competent[30] to testify. A minor's testimony will suffice to convict a person accused of a crime so long as it is credible.[31]

Even during the cross-examination, Mark was unfazed and consistent in his account of the event when his father was shot by accused-appellant, to wit:

ATTY. GABITO:

q:

Do you remember what time of day when your father was shot? Was it nighttime or daytime?

a:

It was night time.

q:

And, in what specific place was your father shot?

a:

In the sala of our house.

q:

Now, considering that it was nighttime, was your balcony lighted.

a:

Yes, sir, it was lighted.

q:

What kind of light was your light?

a:

A bulb.

xxx

q:

You said your father was shot on the balcony, was your father in that balcony before he was shot?

a:

While we were watching TV program inside our house, somebody knocked, when he stepped out of the door, he stoop to see who was knocking, when he bend down he was poked with a gun.

xxx

a:

And, after that a person suddenly entered, he poked a gun to my father and triggered the gun.

q:

Now, who is that person that you saw?

a:

Manuel Delpino.

xxx

q:

Now, while these things were happening, where were you specifically, in what place of the house were you?

a:

I was in the door.

q:

And will you demonstrate to us, the nearness of your father to his assailant?

a:

(The witness pointed to the court interpreter as the position of his father and behind his father is Manuel Delpino and fired the victim.)

(The distance demonstrated being one (1) meter to the court interpreter from where he [the witness] is seated.)

xxx[32]

The determination of a child's intellectual preparedness to be a witness rests primarily with the trial judge, who assesses the child's manners, his apparent possession or lack of intelligence, as well as his understanding of the obligations of an oath. These abstract matters cannot be photographed into the record. The judgment of the trial judge will not be disturbed on review, unless from that which is preserved, it is clear that it was erroneous.[33] Relevant are the questions posited before Mark, thus:

Atty. Gojol:

xxx

q:

Mr. Witness, after having been sworn as a witness to the case, you understand that you will tell the whole truth and nothing but the whole truth?

a:

Yes, sir.

q:

Are you aware that telling a lie is bad?

a:

Yes, sir.

xxx

q:

Did your teacher in kindergarten tell you what will happen if you will tell a lie?

a:

I was told by my teacher that it is forbidden to tell a lie because God will get angry.

xxx[34]

The records reveal that the trial court duly noted the objections, closely observed the proceedings, and propounded its own questions to satisfy itself of the accuracy of the witness' testimony. We find no reason to disturb the factual findings of the trial court.

Accused-appellant was charged with the crime of murder penalized under Article 248 of the Revised Penal Code, as amended by R.A. No. 7659 which provides:

Article 248. Murder. -- Any person who, not falling within the provision of Article 246, shall kill another, shall be guilty of Murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

xxx

- With evident premeditation;(Emphasis supplied)

The Information alleged that the accused-appellant killed the victim with the use a short firearm, and with treachery and evident premeditation.

The trial court and the CA were unanimous in convicting the accused-appellant of the crime of murder.

The trial court appreciated the presence of treachery as the accused-appellant had employed means in his execution of the crime without any risk to himself. There is treachery when the offenders commit any of the crimes against persons employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense which the offended party might make. In order that alevosia may be appreciated as a qualifying circumstance, it must be shown that: a.) the malefactor employed means, method or manner of execution affording the person attacked no opportunity to defend himself or to retaliate; and b.) the means, method or manner of execution was deliberately or consciously adopted by the offender. Its essence is the sudden, unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.[35]

Here, the victim had no chance to defend himself, what with the sudden poking of the gun to his neck and without any warning that he will be shot. Prosecution witness Mark Lorica candidly related to the trial court the event that transpired in that evening of December 16, 1993. Thus:

ATTY. GOJOL:

q:

You said that before your father was shot, you and your father were inside your house watching TV and exchanging jokes. Now, while you and your father were watching TV and exchanging jokes, what happened, if any?

a:

Suddenly, there was a knock at the door.

q:

After that knock on the door, what happened, if any?

a:

My father asked who was the person at the door but the person did not answer.

q:

And, after that, what happened next?

a:

My father opened wide the door and while my father was stooping down to get his slippers, Ti'o Manuel poked the gun at him.

q:

After your Ti'o Manuel, the accused in this case, poked the gun to your father, what happened next, if any?

a:

My father fell down.

COURT:

q:

Before your father fell down, did you actually see what happened to that gun being poked by accused Manuel at your father?

a:

Yes, sir.

q:

What did you see?

a:

A gun, Your Honor.

q:

Did you see what happened to that gun?

a:

Yes, sir.

q:

What happened to that gun while it is being poked to your father?

a:

It was fired and my father was hit on is neck (witness pointed to the base of his neck.)

q:

Did you see who fired that gun being poked at your father?

a:

Yes, sir.

q:

Whom did you see?

a:

Ti'o Manuel.

q:

The very same Manuel whom you pointed to a while ago in open Court?

a:

Yes, sir.[36]

Verily, the victim had no idea what would befall him when he went to see the person knocking at their door. He had no means to defend himself. In fact, at the time he was shot, he was stooping down to get his slippers. In such a position, he was indeed, defenseless. The means employed by the accused-appellant by using a firearm, and firing it when the accused was caught unaware at what could have hit him, was such that the victim would be unable to fight him back. The attack was so swift and unexpected that the unarmed victim had no chance to resist the attack. Accused-appellant was not exposed to any danger.

The trial court, however, did not appreciate the aggravating circumstance of evident premeditation. It ruled that there was no direct evidence of the planning and the preparation to kill the victim, and that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at calm judgment. The prosecution did not present evidence on this matter. It dealt mainly on the moment when the victim was killed by the accused-appellant. Thus, no concrete proof was submitted as to how and when the plan to kill was formulated or what time had elapsed before it was carried out.

In *People v. Tiple*,^[37] we have held that to warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act. We held that threats to kill do not necessarily prove evident premeditation. Here, the wife of the victim, Marilyn Lorica testified that two months before the killing or on October 28, 1993 accused-appellant poked a gun at her husband.^[38] But apart from her testimony, the prosecution had not presented anything to show that the accused had clung to his threat on that day until the shooting of the victim on December 16, 1993. There was no showing when and how the accused-appellant had planned and prepared to kill the victim. Accused-appellant's threats, unsupported by evidence disclosing a criminal state of mind, are merely casual remarks naturally emanating from a feeling of rancor and not proof of evident premeditation.^[39] This principle holds true only in debunking the allegation that the killing of the victim was attended by evident premeditation. This, however, does

not exculpate the accused-appellant from his guilt because he was positively identified by a credible witness as the perpetrator.

The firearm used in the killing of the victim was not presented during the trial. Both the trial court and the CA also did not discuss anything in relation thereto. The case of *People v. Ortiz*[40] held that the failure to present the murder weapon would not exculpate the accused-appellant from criminal liability. Further, the presentation and identification of the weapon used are not indispensable to prove the guilt of the accused,[41] as in this case,[42] the perpetrator has been positively identified by a credible witness.[43]

As testified to by Dr. Listanco, the bullet passed through the neck of the victim.

Q -

You said that there was only one injury sustained by the victim. Where is this injury located?

A -

3 cm on the left neck (witness pointed on her left neck.)

Q -

Could it be possible that the assailant is in front of the victim when the gun was fired?

A -

If the assailant is right handed he can.

Q -

Where is the point of entry?

A -

Here (witness pointed to the left side of her neck.)[44]

The health officer's testimony and medical report coincide with Mark Lorica's testimony that when the victim was stooping down to get his slippers, the accused-appellant pointed his gun at him and shot him on the neck.

Murder is punishable by reclusion perpetua to death.[45] In relation thereto, Article 63 of the Revised Penal Code provides:

Art. 63. Rules for the application of indivisible penalties.--xxx

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
- When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

While treachery qualified the killing to murder, neither aggravating nor mitigating circumstances attended the commission of the felony. Hence, the penalty of reclusion perpetua was properly imposed.

The trial court sentenced the accused-appellant to suffer imprisonment of reclusion perpetua and ordered him to pay the heirs of Gabriel Lorica the amount of P10,000.00 for actual damages incurred during the wake and to indemnify the heirs of Gabriel Lorica the amount of P50,000.00 as civil indemnity without subsidiary imprisonment in case of insolvency and to pay the cost. The accused being a detention prisoner in the service of his sentence his detention shall be fully credited.

The CA modified the assailed Decision in that the accused-appellant is ordered to pay the heirs of the victim Gabriel Lorica the amount of P50,000.00 as moral damages, in addition to the P50,000.00 civil indemnity and P10,000.00 actual damages awarded by the trial court.

As to the civil aspect of the case, the award of civil indemnity to the heirs in the amount of P50,000.00 is hereby affirmed.[46]

As to the award of P10,000.00 as actual damages, the same was based on the testimony of Marilyn Lorica that she spent the said amount for the wake, burial and internment of her husband.[47] Other than her statement, no other proof was presented to justify the award of actual damages. To be entitled to 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 to the injured party.[48] Here, no receipts were ever presented to show that Marilyn spent the said amount which was awarded by the trial court. Thus, the award of actual damages is hereby deleted for lack of factual and legal basis. Nonetheless, the accused should pay the heirs of the victim temperate damages under Article 2224 of the Civil Code[49] in the amount of P25,000.00.[50]

The award of moral damages in the amount of P50,000.00 is in order.[51] Additionally, given the attendance of qualifying circumstance of treachery, the award of exemplary damages to the heirs of the victim in the amount of P25,000.00[52] in accordance with Article 2230[53] of the Civil Code is justified.

WHEREFORE, the appealed Decision dated December 19, 2005 of the CA in CA-G.R. CR.-H.C. No. 01513, finding accused-appellant Manuel Delpino guilty of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua is **AFFIRMED** with **MODIFICATION** in that the award of actual damages is deleted, and, in lieu thereof, accused-appellant is ordered to pay the heirs of the late Gabriel Lorica y Canon P25,000.00 as temperate damages, in addition to P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Corona, and Bersamin, JJ., concur.

[1] Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Josefina Guevarra-Salonga and Vicente S.E. Veloso; rollo, pp. 3-8.

[2] RTC Records, pp. 124-128.

[3] Id. at 19.

[4] Order dated May 10, 1994, id. at 26.

[5] Transcript of Stenographic Notes (TSN), August 30, 1994; TSN, November 23, 1995.

[6] TSN, August 30, 1994, p. 3.

[7] TSN, February 21, 1996.

[8] TSN, April 18, 1996; January 14, 1997.

[9] CA rollo, pp. 61-62.

[10] TSN, August 13, 1997.

[11] TSN, September 30, 1997.

[12] CA rollo, pp. 38-39.

[13] RTC Records, p. 128.

[14] Notice of Appeal, CA rollo, p. 25.

[15] Id. at 80.

[16] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, which modified the pertinent provisions of the Revised Rules on Criminal Procedure, specifically Sections 3 and 10, Rule 122, Section 13, Rule 124, Section 3, Rule 125 and any other rule insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua, or life imprisonment and (b) Resolution of the Supreme Court, en banc, dated September 19, 1995 in "Internal Rules of the Supreme Court" in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Article VIII, Section 5 of the Constitution, and allowing an intermediate review by the Court of Appeals before such cases are elevated to this Court.

[17] Supra note 1.

[18] CA rollo, pp. 86-87.

[19] Id. at 90.

[20] Rollo, pp. 10-13.

[21] TSN, August 13, 1997, p. 3.

[22] TSN, September 30, 1997, p. 6.

[23] RTC Decision, RTC records, p. 127.

[24] People v. Mosquerra, G.R. No. 129209, August 9, 2001, 362 SCRA 441, 450, citing People v. Saban, G.R. No. 110559, November 24, 1999, 319 SCRA 36, 46; People v. Reduca, G.R. No. 126094-95, January 21, 1999, 301 SCRA 516, 534.

[25] Supra, p. 450, citing People v. De Labajan, 317 SCRA 566, 575 (1999).

[26] TSN, August 13, 1997, pp. 10-11.

[27] Id. at 10.

[28] TSN, August 30, 1994.

[29] People v. Avendaño, G.R. No. 137407, January 28, 2003, 396 SCRA 309, 320, citing People v. Gonzales, 311 SCRA 547, 559 (1999).

- [30] *People v. Avendaño*, supra, citing *People v. Pearson*, 126 III App. 2d 166, 261 N.E.2d 519.
- [31] *People v. Avendaño*, supra, citing *People v. Tumaru*, 319 SCRA 515, 527 (1999).
- [32] TSN, November 23, 1995.
- [33] *People v. Avendaño*, supra, citing *People v. Mendoza*, 254 SCRA 18, 32-33 (1996).
- [34] TSN, August 30, 1994.
- [35] *People v. Andres Ortiz y Pebrero*, G.R. No. 133814, July 17, 2001, 361 SCRA 274, 296-297.
- [36] TSN, August 30, 1994, pp. 19-22.
- [37] G.R. No. 147667, January 21, 2004, 420 SCRA 424, 436, citing *People v. Baldogo*, G.R. Nos. 128106-07, January 24, 2003.
- [38] TSN, February 21, 1996, p. 8.
- [39] *People v. Tigle*, supra, p. 436, citing *Rabor v. People*, 338 SCRA 381 (2000).
- [40] *People v. Ortiz*, supra, p. 295.
- [41] Supra, citing *People v. Sumaoy*, 263 SCRA 460 (1996), citing *People v. Fulinara*, 247 SCRA 28 (1995) and *People v. De Guzman*, 231 SCRA 737 (1994).
- [42] TSN, August 30, 1994, pp. 19-22.
- [43] *People v. Ortiz*, supra, p. 295, citing *People v. Padoa*, 267 SCRA 64 (1997).
- [44] TSN, April 18, 1996, p. 5.
- [45] Article 248, Revised Penal Code, as amended by Republic Act No. 7659.
- [46] *People v. Nicolas*, G.R. No. 137782, April 1, 2003, 400 SCRA 217, 227.
- [47] TSN, February 21, 1998, p. 6.
- [48] *People v. Danny Delos Santos*, G.R. No. 135919, May 9, 2003, 403 SCRA 153, 165, citing *People v. Acosta*, G.R. No. 143386, November 29, 2001, 371 SCRA 181; *People v. Suelto*, 381 Phil. 351; 326 SCRA 49 (2000); *People v. Samolde*, G.R. No. 128551, July 31, 2000, 336 SCRA 632.
- [49] Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.
- [50] *People v. Abrazaldo*, G.R. No. 124392, February 7, 2003, 397 SCRA 137.
- [51] *People v. Nicolas*, supra, citing *People v. Panado*, 348 SCRA 679, 691, (2000).
- [52] Supra, citing *People v. Catubig*, 363 SCRA 621, 635 (2001).
- [53] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

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