

ARNALDO MENDOZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 173551. October 04, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] and Resolution[2] dated 30 November 2005 and 5 July 2006, respectively, of the Court of Appeals in CA-G.R. CR-H.C. No. 00446, affirming with modification the Decision[3] and Order[4] of the Lipa City Regional Trial Court (RTC), Branch 12, dated 20 October 2004 and 24 November 2004, respectively, in Criminal Case No. 0582-98 convicting petitioner Arnaldo Mendoza of the crime of murder, and imposing upon him the supreme penalty of death plus civil indemnity, actual, moral and exemplary damages.

On 6 October 1998, petitioner and his relatives by affinity, namely, Manolito Gonzales (Manolito), Glenn Gonzales (Glenn) and Ruperto de Villa (Ruperto), were indicted in an Information[5] for murder, allegedly committed as follows:

That on or about the 1[st] day of September, 1998, at about 1:30 o'clock in the afternoon, at Barangay Lumanglipa, Municipality of Mataasnakahoy, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with unlicensed short firearms and M-16 rifle, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill, with treachery, evident premeditation and grave abuse of superior strength and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearms suddenly and without warning one Ernesto Velasquez y Ciruelas, thereby inflicting upon the latter gunshot wounds on the different parts of his body, which directly caused his death.

After evading arrest for around four years, petitioner surrendered to the authorities, while his co-accused Manolito, Glenn and Ruperto remained at large. When arraigned on 14 August 2002, petitioner, with the assistance of counsel de parte, pleaded "Not Guilty" to the charge.[6] Thereafter, trial on the merits ensued.

Gathered from the records are the following facts:

Petitioner is Manolito's brother-in-law, while the latter is Glenn's father. Ruperto is Manolito's cousin.[7]

On 31 August 1998, at about 5:00 in the afternoon, the victim, Ernesto C. Velasquez (Ernesto), and his friends were drinking and singing outside the house of Ernesto's parents at Barangay Lumanglipa, Mataasnakahoy, Batangas when a gunshot rang out. Ernesto ran towards the road in front of his parent's house and saw Glenn driving a jeepney loaded with several passengers and heading towards the southern direction. Minutes later, Glenn, who was driving alone this time and heading towards the northern direction, passed again in front of the house of Ernesto's parents. Ernesto flagged down and asked Glenn who had fired a gunshot earlier in front of his parent's house. Glenn responded, "Wala ka nang pakialam kung sino ang nagpapatok!" Irked, Ernesto pushed Glenn's left chin with his palm and told the latter "Umalis ka na, bastos ka!" When Glenn was about to leave, he threatened Ernesto, "Humanda ka, babalikan ka namin, papatayin ka namin!"[8]

On 1 September 1998, at around 8:00 in the morning, petitioner, Glenn, Manolito and Ruperto boarded a red Nissan Sentra Super Saloon car with plate number UBU-674 and traversed the southern road of Barangay Lumanglipa, Mataasnakahoy, Batangas. Petitioner drove the car.[9]

At about 9:30 in the morning of 1 September 1998, petitioner, Glenn, Manolito and Ruperto, on board the same car, arrived at the house of Ernesto's parents at Barangay Lumanglipa, Mataasnakahoy, Batangas. Petitioner and Ruperto went out of the car and inquired from Ernesto's wife, Vida Velasquez (Mrs. Velasquez), the whereabouts of Ernesto. Mrs. Velasquez replied that Ernesto was in Mataasnakahoy. Thereafter, petitioner, Glenn, Manolito and Ruperto left and proceeded to the direction of Mataasnakahoy.[10]

At 1:30 in the afternoon of 1 September 1998, petitioner, Glenn, Manolito and Ruperto reached Mataasnakahoy and parked the car near a chapel. Petitioner went out of the car while Glenn, Manolito and Ruperto remained inside. Petitioner then walked towards a group of persons, among them Ernesto, who were playing a card game called tong-its near the chapel. Petitioner approached Ernesto and asked, "Ikaw ba si Ernesto Velasquez?" Ernesto answered, "Ako nga po." Petitioner asked him again, "Ay bakit ganoon, bakit mo sinampal agad si Glenn Gonzales?" Ernesto retorted, "Hindi ko sinampal, nilamas ko lamang ang bibig dahil masama ang nalabas sa bibig niya." Subsequently, petitioner called Glenn, who was inside the car. When Glenn alighted, petitioner told Glenn, "Yon pala namay nilamas lamang ang bibig mo ay anong desisyon mo?" Without saying a word, Glenn drew a short firearm, approached Ernesto frontally and shot the latter who was sitting at that moment. Ernesto stood up and tried to run, but he fell towards the ground. Glenn fired more shots at Ernesto, who was lying on the ground. Petitioner also drew a short firearm and shot Ernesto once. When petitioner and Glenn were about to board the car, petitioner noticed that Ernesto was still alive. Thus, petitioner told Manolito and Ruperto who were at the backseat of the car, "Pare, buhay pa ito, gamitin mo yung mahaba." Ruperto then handed an M-16 armalite to Manolito. The latter took the armalite and moved to the driver's seat. Thereupon, Manolito shot Ernesto with the armalite. Ruperto also shot Ernesto with a short firearm. When petitioner was about to board the car, he brandished his short firearm and shouted, "Sino pa sa inyo?" Thereafter, petitioner, Glenn, Manolito and Ruperto left the crime scene on board the car. Subsequently, several persons brought Ernesto to the hospital where he was pronounced dead on arrival.[11]

Petitioner denied any involvement in the killing of Ernesto. He alleged that on 1 September 1998, at about 9:30 in the morning, Manolito and Glenn arrived at his house at Barangay II, Mataasnakahoy, Batangas. Manolito and Glenn told him that they will hitch a ride with him in going to Barangay Lumanglipa since petitioner will also go to the said place with his car to buy tilapia from his mother-in-law for the birthday of his son on the next day, September 2.[12] While on their way to Barangay Lumanglipa, Manolito and Glenn asked him if they can pass by the house of Ernesto's parents. He agreed. However, upon reaching Barangay Lumanglipa, Manolito and Glenn changed their minds and instead requested him to proceed to the barangay hall of Lumanglipa. While traversing the road leading to the barangay hall, they saw Ruperto in a nearby chapel. Manolito and Glenn told him to stop the car and wait for them. Manolito and Glenn alighted from the car and talked with Ruperto. Petitioner drove the car a little farther and parked it beside the road.[13]

Later, he went out of the car and decided to go to the house of "Pareng Digo." But before he could go farther, he heard gunshots and saw some persons scampering. He went back inside the car and started the engine. When he maneuvered the car towards the road back to Barangay II, Mataasnakahoy, Manolito, Glenn and Ruperto suddenly appeared and boarded the car. The three, who were nervous and jittery, told him to speed up the car. He then asked them, "Bakit, bakit ano bang nangyari?" One of the three whom he could no longer recall told him, "Basta idiretso mo at saka na kami magpapaliwanag sayo" After traveling for a few minutes, one of the three whom he could not also remember directed him to pull over on the side of the road because they will just talk to somebody.

He told the three that he will go ahead and that he was leaving the car to them. He immediately went out of the car and boarded a jeepney bound for Lipa City. Upon seeing a telephone booth along the way, he alighted from the jeepney, entered the telephone booth and called his house at Barangay II, Mataasnakahoy. A person, whom he again failed to recall, answered his call and instructed him to proceed to his house/residence at Sta. Cruz, Manila.[14]

Subsequently, he boarded a bus bound for Manila. Upon reaching his house/residence at Sta. Cruz, Manila, he slept. When he woke up the next morning, his wife told him that he was implicated in the murder of Ernesto.[15]

After trial, the RTC rendered a Decision dated 13 October 2004 finding petitioner guilty beyond reasonable doubt of the crime of murder. Thus:

WHEREFORE, the Court finds the accused, ARNALDO MENDOZA, guilty beyond reasonable doubt, as co-principal by direct participation, of the crime of murder, as defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, with one (1) aggravating circumstance, and sentences him to suffer the penalty of DEATH.

Arnaldo Mendoza is also ordered to pay the heirs of Ernesto Velasquez the sums of P50,000.00, as indemnification for his death, P35,000.00, as actual damages, P100,000.00 as moral damages and P50,000.00 as exemplary damages and to pay his proportionate share of the costs. For insufficiency and unreliability of the evidence of loss of earning capacity, no award for the same is made.[16]

Petitioner filed a Motion for Reconsideration dated 25 October 2004,[17] and a Supplemental Motion for Reconsideration[18] dated 8 November 2004 which were denied by the RTC in its Order dated 24 November 2004.

Undaunted, petitioner appealed to the Court of Appeals. On 30 November 2005, the appellate court promulgated its Decision affirming with modification the RTC decision. The modification pertains only to the amount of moral and exemplary damages. The appellate court decreed:

WHEREFORE, the decision of the Regional Trial Court of Lipa City, finding accused-appellant ARNALDO MENDOZA GUILTY beyond reasonable doubt of murder and sentencing him to suffer the supreme penalty of death is hereby AFFIRMED. With regard to the civil aspect of the case, except with respect to the civil indemnity and actual damages, same is MODIFIED to read as follows: Appellant is hereby ordered to pay the heirs of the victim the amount of P50,000.00 as moral damages and P25,000.00 as exemplary damages.

However, pursuant to Section 13, Rule 124 of the Amended Rules to Govern Review of Death Penalty Cases, We refrain from entering judgment and, instead, forthwith certify the case and elevate its entire record to the Supreme Court for further review.[19]

Petitioner filed a Motion for Reconsideration dated 3 January 2006[20] but was denied by the appellate court in its Resolution dated 5 July 2006.

Before us, petitioner assigns in his Petition,[21] Supplemental Petition for Review[22] and Supplemental Brief [23] the following errors:

I.

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE CREDIBLE.

II.

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT

CONSPIRACY EXISTS AND THAT AGGRAVATING CIRCUMSTANCES OF EVIDENT PREMEDITATION AND ABUSE OF SUPERIOR STRENGTH ATTENDED THE KILLING OF THE VICTIM.

III.

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT ACCUSED IS NOT ENTITLED TO THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

IV.

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN DISREGARDING THE FACT THAT THE TRIAL JUDGE TOTALLY DENIED ACCUSED-APPELLANT OF HIS DAY IN COURT.

Anent the first issue, petitioner maintains that the prosecution failed to establish the true identity of the person who shot to death Ernesto; that the prosecution's alleged eyewitness Dante Ciruelas (Ciruelas) did not mention in his affidavit that he saw petitioner shoot Ernesto after the latter was shot by Glenn, whereas during the trial, Ciruelas testified that he saw petitioner shoot Ernesto right after Glenn shot Ernesto; that such is a material and substantial inconsistency which adversely affects the credibility of Ciruelas as an eyewitness; and that Ciruelas's testimony was not corroborated by other prosecution witnesses.[24]

Petitioner also asserts that there is a material discrepancy between the testimonies of Ciruelas and the doctor who autopsied the body of Ernesto, namely, Dr. Antonio S. Vertido (Dr. Vertido). According to petitioner, Ciruelas testified that during the incident, Glenn positioned himself at a distance of one meter in front of Ernesto, who was then seated on a chair and playing tongits, and shot the latter for the first time. Thus, if Ernesto was sitting and facing Glenn at the time he was allegedly shot by the latter, the bullet that hit Ernesto should have been located somewhere in his chest or in any upper portion of his body and that the gunshot wound should have a point of entry somewhere in the anterior or front portion of Ernesto's body and not at his back or in the posterior portion of his body. On the contrary, Dr. Vertido testified that, except for the gunshot wound in the right thigh of Ernesto, the entry points of the three other gunshot wounds were located at Ernesto's back or in the posterior part thereby indicating that the assailant was at Ernesto's back at the time the latter was shot.[25]

Petitioner further avers that Dr. Vertido's testimony that the three gunshot wounds sustained by Ernesto were caused by an armalite bullet and that the fourth gunshot wound was caused by a .22 caliber bullet is very inconsistent with his other statement that all of the four gunshot wounds sustained by Ernesto have the same diameter; that no bullets and empty shells from the armalite allegedly used by Manolito were found in the body of Ernesto and in the crime scene; and that the deformed slug and empty shells presented by the prosecution were not subjected to ballistic examination.[26]

As testimonial evidence, the prosecution presented the following witnesses, namely: Reynaldo Velasquez (Reynaldo), Ciruelas, Maximino Guterrez (Gutierrez), SPO1 Dominador Castillo (SPO1 Castillo), Dr. Vertido, Police Chief Inspector Ruben S. Castillo (Police Chief Castillo) and Mrs. Marquez.

Reynaldo, brother of Ernesto and a resident of Barangay Lumanglipa, Mataasnakahoy, Batangas, testified that he knows petitioner because petitioner and the latter's wife are natives of Barangay Lumanglipa, Mataasnakahoy, Batangas. He also knows Glenn, Manolito and Ruperto because they are all residents also of Barangay Lumanglipa, Mataasnakahoy, Batangas. He narrated that on 31 August 1998, at about 5:00 in the afternoon, he was with Ernesto and the latter's friends outside their parent's house located at Barangay Lumanglipa, Mataasnakahoy, Batangas. Ernesto and the latter's friends were then drinking and singing when a gunshot rang

out. He immediately looked on the road opposite his parent's house and saw Glenn driving a jeepney filled with passengers and was traveling on the southern direction leading to the Poblacion of Mataasnakahoy, Batangas. At about 7:00 in the evening, he was buying cigarettes in a nearby store when he saw Glenn, who was driving alone on the northern direction, pass by in front of his parent's house. At a distance of two meters, he saw Ernesto flag down Glenn. When Glenn pulled over on the side of the road, Ernesto approached the former and inquired as to who fired a gunshot when he and his visitors passed in front of his parent's house in going to the Poblacion. Glenn replied "Wala ka nang pakialam kung sino ang nagpaputok!" Irked, Ernesto pushed Glenn's left chin with his palm and told the latter, "Umalis ka na, bastos ka!" When Glenn was about to leave, he threatened Ernesto, "Humanda ka, babalikan ka namin, papatayin ka namin!" Thereafter, Glenn sped away while he led Ernesto to his own house, which is adjacent to the house of their parents.

The next day, 1 September 1998, at around 8:00 in the morning, he drove his own jeepney and went to the Poblacion. On the way, he saw, on the southern part of Barangay Lumanglipa, petitioner, Glenn, Manolito and Ruperto on board a maroon Nissan Sentra Super Saloon with plate number UBU-674. Petitioner was the one driving. He nodded at petitioner, but the latter just looked at him and ignored him. Since then, he did not see petitioner, Glenn, Manolito and Ruperto again.[27]

Ciruelas, uncle of Ernesto and a resident of Barangay Lumanglipa, Mataasnakahoy, Batangas, testified that he knows petitioner because the latter's wife was his former classmate and that he also knows Glenn, Manolito and Ruperto for they are all residents of Barangay Lumanglipa, Mataasnakahoy, Batangas. He declared that on 1 September 1998, at about 1:00 in the afternoon, he was with a group of persons playing tongits in a table near a road which was four meters away from a chapel at Barangay Lumanglipa, Mataasnakahoy, Batangas. Among the persons present were Ernesto, and certain individuals, namely, Menandro Ariola (Ariola), German Ciruelas (German), Ruel Umali (Ruel) and Petillano Umali (Petillano). Only German, Ruel and Ariola were playing tongits then, while he, Ernesto, Petillano and some unidentified persons were merely kibitzers or onlookers. At about 1:15 in the afternoon, Ernesto substituted Ariola as one of the tongits players. At around 1:30 in the afternoon, while watching Ernesto and his companions play tongits, he noticed a maroon Nissan Sentra Super Saloon with plate number UBU-674 approach their place/position. He saw petitioner driving the said car with Manolito, Glenn and Ruperto on board as passengers. Petitioner parked the car at a distance of three meters from the table where Ernesto, German and Ruel were playing tongits. Petitioner went out of the car and approached Ernesto who was then seated and playing tongits. He was then one meter away from the position of Ernesto. Petitioner asked Ernesto, "Ikaw ba si Ernesto Velasquez?" Ernesto answered, "Ako nga po." Petitioner asked again, "Ay bakit ganon, bakit mo sinampal agad si Glenn?" Ernesto replied "Hindi ko po sinampal." Petitioner once more asked, "Bakit mo sinampal agad si Glenn Gonzales?" Ernesto responded, "Hindi ko sinampal, nilamas ko lamang ang bibig dahil masama ang nalabas sa bibig niya." Petitioner went back to the car and called Glenn who was inside the car. When Glenn alighted from the car, petitioner told the former, "Yon pala namay nilamas lamang ang bibig mo ay anong desisyon mo?" Without saying a word, Glenn drew a short firearm and upon cocking it, a bullet ejected therefrom. Glenn went in front of Ernesto who was then seated and playing tongits, and shot the latter once. Stunned, he took cover nearby but did not entirely leave the scene, while the rest of the players and onlookers scampered to different directions and hid. He saw Ernesto stand up and try to run but the latter fell with his right face hitting the ground.

Glenn fired more shots at Ernesto, while the latter was lying on the ground. Thereafter, at a distance of more or less two meters from petitioner, Glenn saw petitioner shoot Ernesto once with a short firearm. When petitioner was about to board the car, he noticed that Ernesto was still breathing. Petitioner then informed Glenn, Manolito and Ruperto that Ernesto was still alive. Within a distance of more or less four meters, Glenn saw Ruperto, who was then at the backseat of the car, take an armalite and give it to Manolito who was then seated beside the

driver's seat. Manolito took the armalite, sat in the driver's seat, and shot Ernesto several times with the armalite. Ruperto, who was in the backseat of the car, also drew a short firearm and shot Ernesto. Petitioner then looked around and shouted, "Sino pa sa inyo?" Subsequently, petitioner boarded the car while Manolito sat beside him and Glenn moved to the backseat. Petitioner drove the car and proceeded to the direction of the town proper. Afterwards, he and several others immediately approached Ernesto and loaded the latter into a jeepney. They brought Ernesto to Dr. Faller Hospital where he was pronounced dead.[28]

Gutierrez, Barangay Captain of Barangay Lumanglipa, Mataasnakahoy, Batangas from 1998 up to 2002, testified that he knows petitioner, Glenn, Manolito, Ruperto and their respective families because they are all natives/residents of Barangay Lumanglipa, Mataasnakahoy, Batangas. He told the court that on 1 September 1998, at around 1:30 in the afternoon, while fixing the engine of his motor banca at the lakeshore of Barangay Lumanglipa, Mataasnakahoy, Batangas, which is about thirty meters away from his house, he heard gunshots coming from the place near his house. He went to his house to verify the gunshots. When he was about twelve meters away from reaching his house, he took cover beside a sari-sari store owned by a certain Armenio Ciruelas. He saw petitioner, Glenn and Ruperto holding pistols while Manolito was holding an armalite. They were four meters away in front of his house. Petitioner and Glenn were standing beside a maroon Nissan Sentra Super Saloon with plate number UBU-674, while Manolito and Glenn were seated at the backseat of the car. Thereafter, he heard petitioner say, "Pare, buhay pa ito, gamitin mo yung mahaba." Manolito then opened the window of the car, placed the barrel of an armalite outside the window, and fired the armalite several times. He did not see the person to whom the shots were directed because his view was blocked by the car. He saw Ciruelas hiding beside the post of a nearby chapel while also watching the incident.

Later, he heard petitioner utter, "Sino pa sa inyo?" Petitioner, Glenn, Manolito and Ruperto thereafter left the scene. He then approached the bloodied Ernesto who was sprawled on the ground in front of his house. He and several persons brought Ernesto to Dr. Faller Hospital. Since Ernesto was already pronounced dead, he and some companions brought Ernesto's body to the Mataasnakahoy Police Station to report the incident. Upon the advice of Police Chief Castillo, he instructed Ciruelas to bring Ernesto's body to San Jose, Batangas for autopsy.[29]

SPO1 Castillo, a member of the Philippine National Police since 1985, testified that in September 1998, he was assigned at the Police Station of Mataasnakahoy, Batangas. On 1 September 1998, he reported for work as duty investigator from 8:00 in the morning of that day up to 8:00 in the morning of the following day. On the said date, at about 2:30 in the afternoon, he, Police Chief Castillo and other colleagues were in the Police Station of Mataasnakahoy, Batangas, when German reported a shooting incident at Barangay Lumanglipa, Mataasnakahoy, Batangas. German told him that the perpetrators were on board a maroon Nissan Sentra Super Saloon with plate number UBU-674. He and some colleagues alerted and requested the nearby police stations of Lipa City, Malvar, Balete, Tanauan City, Cuenca and San Jose to block the route of the said vehicle and apprehend its occupants. After being informed that the victim was in the hospital and was already dead, he, Police Chief Castillo and some colleagues went to the crime scene and conducted an investigation. Upon arriving at the crime scene, they saw a plastic table and three chairs in disarray, and some blood stains near the table. They also found four empty shells of Super Caliber .38, one live ammunition of Super Caliber .38 and one deformed slug of Super Caliber .38. These were recovered two meters away from the table. He interviewed Gutierrez and other persons who witnessed the incident. Subsequently, he prepared a sketch of the crime scene and placed, as markings, three parallel lines on the said empty shells and three parallel curving on the live ammunition. He assured the court that the empty shells and live ammunition recovered from the crime scene came from a Super Caliber .38 because it was indicated on the shells themselves.

SPO1 Castillo personally prepared the criminal complaint and listed as one of the exhibits attached thereto one

empty shell of an M-16 armalite rifle since this was recovered by Police Chief Ruben Castillo from a maroon Nissan Sentra Super Saloon with plate number UBU-674. On 2 September 1998, he was then off-duty when Police Chief Castillo called and told him that the car which fits the description of the car allegedly used by the assailants during the incident was found abandoned in Barangay Magape, Balete, Batangas. Police Chief Castillo proceeded to the said place, towed the car and brought it to the police station of Barangay Lumanglipa, Mataasnakahoy, Batangas. When he reported for duty on 3 September 1998, he saw the car in front of the police station, and Police Chief Castillo handed him an empty shell of an M-16 armalite rifle recovered from the same car. He then placed his marking "DCC" on the surface of the empty shell and searched the car. He did not find anything else so he just took a picture of it. Thereafter, he took the statements of Gutierrez, Ariola and Ciruelas.[30]

Dr. Vertido, Medico-Legal Officer of the National Bureau of Investigation, Batangas Regional Office, testified that he conducted an autopsy on the body of Ernesto on the evening of 1 September 1998. His findings are as follows:

POST MORTEM FINDINGS

Pallor, lips and nailbeds.

Abrasions, anterior chest wall, midline, 6.5 x 2.5 cm., hand, left, dorso-lateral aspect, 0.5 x 0.5 cm.

Grazing wounds, anterior chest wall, left, 12.0 x 6.0 cm., mammary area, left, 5.0 x 1.0 cm.

GUNSHOT WOUNDS:

I ENTRANCE, 0.5 x 0.6 cm., ovaloid, edges inverted, located at the back, left side, 8.5 cm. from the posterior median line, 110.0 cm. above the left heel, directed forward, upward and laterally, involving the skin and underlying soft tissues, blasting lower lobe of the left lung and making an EXIT wound, 1.0 x 1.5 cm., ovaloid, edges everted, located at the left anterior chest wall, 17.0 cm. from the posterior median line, 116.5 cm. above the left heel.

II ENTRANCE, 0.5 x 0.6 cm., ovaloid, edges inverted, located at the left lumbar area, 4.5 cm. from the posterior median line, 104.0 cm. above the left heel, directed forward, upward and from left to right, involving the skin and soft tissues, perforating omentum, intestine, blasting liver, diaphragm and lower lobe of the left lung, then finally making an EXIT wound, 1.0 x 1.2 cm., ovaloid, edges everted, located at the right antero-lateral chest wall, 20.0 cm. from the anterior median line, 116.0 cm. above the left heel.

III ENTRANCE, 0.5 x 0.7 cm., ovaloid, edges inverted, located at the left arm, posterior aspect, middle third, 10.0 cm. above the left elbow, directed forward, and downwards, involving the skin and soft tissues, fracturing the left humerus, middle third, severing the corresponding blood vessels then making an EXIT, 17.0 x 14.0 cm. irregular, located at the middle and lower third of the left arm, 5.0 cm. above the left elbow.

IV. ENTRANCE, 0.5 x 0.6 cm., ovaloid, edges inverted, located at the right thigh, anterior aspect, upper third, 33.0 cm. above the right knee, directed backwards, upwards and medially, involving the skin and underlying soft tissues, grazing the right femur, cutting the right femoral artery and making an EXIT at the anal opening.

CAUSE OF DEATH: Hemorrhage, severe, secondary to Gunshot wounds.[31]

He also found during the autopsy that Ernesto's brain was pale implying severe blood loss. He concluded then that Ernesto's death was caused by hemorrhage secondary to gunshot wounds. He reduced his findings in writing and issued the corresponding Death Certificate[32] of Ernesto.

The prosecution dispensed with the testimony of Police Chief Castillo when petitioner, through counsel, admitted

that he was the one who recovered one empty shell of an M-16 armalite rifle under the seat of the maroon Nissan Sentra Super Saloon with plate number UBU-674 which was found abandoned in Barangay Magape, Balete, Batangas.[33]

Mrs. Velasquez, wife of Ernesto, testified that on 1 September 1998, at about 9:30 in the morning, she was at the main door of her parents-in-law's house at Barangay Lumanglipa, Mataasnakahoy, Batangas, when Ruperto and petitioner approached her. Ruperto was wearing a camouflage jacket while petitioner was clad in a black jacket. Both had something bulging at their backs. Petitioner and Ruperto had two companions, whom she recognized as Glenn and Manolito, seated inside a maroon Nissan Sentra Super Saloon with plate number UBU-674. Petitioner asked her about Ernesto's father, "Nasaan si Ka Piko?" She replied that her father-in-law was in Manila. Petitioner then inquired, "Nasan yung anak ni Ka Piko, si Ernesto?" She said that Ernesto was in Mataasnakahoy, Batangas. Ruperto asked when will Ernesto come home. She said she does not know. Afterwards, petitioner and Ruperto went back inside the car and proceeded to the direction of Mataasnakahoy, Batangas. Later that afternoon, she learned that Ernesto was shot near the barangay chapel and was already dead.

The prosecution also presented documentary and object evidence to buttress the foregoing testimonies of the prosecution witnesses, to wit: (1) sworn statement of Ciruelas;[34] (2) sworn statement of Ariola;[35] (3) pictures of the maroon Nissan Sentra Super Saloon with plate number UBU-674;[36] (4) sworn statement of Gutierrez;[37] (5) sworn statement of Mrs. Velasquez;[38] (6) one live ammunition of Super Caliber .38;[39] (7) four empty shells of Super Caliber .38;[40] (8) one deformed slug of Super Caliber .38;[41] (9) one empty shell of an M-16 armalite rifle;[42] (10) sketch of the crime scene drawn and prepared by SPO1 Castillo;[43] (11) certification issued by the Chief of the Firearms and Explosives Division of the Philippine National Police, Camp Crame verifying, among other things, that petitioner was a licensed/registered holder of a Pistol Colt Caliber .38, and that the license was issued on 15 June 1995 and expired on November 1997 and has not been renewed since then;[44] (12) letter-request for autopsy dated 2 September 1998;[45] (13) certification identifying the body of Ernesto signed by the sister of Ernesto and Dr. Vertido;[46] (14) findings/autopsy report on the body of Ernesto signed by Dr. Vertido;[47] (15) anatomical sketch indicating the wounds mentioned in the autopsy report of Dr. Vertido;[48] (16) death certificate of Ernesto issued and signed by Dr. Vertido;[49] (17) lists of expenses and receipts for the funeral, coffin, autopsy and food during the burial of Ernesto;[50] and (18) overseas employment certificate of Ernesto.[51]

For its part, the defense presented Ariola and petitioner as its witnesses.

Ariola was introduced by the defense as an adverse witness to repudiate prosecution's theory that petitioner was allegedly outside the car when the latter shot Ernesto. He testified that he executed a sworn statement dated 3 September 1998 regarding the incident. Paragraph 12 of the said statement reads:

T - Ang sabi mo ay malapit ka lamang ng maganap ang pagbaril kay Ernesto, saan naman siya tinamaan, maari mo bang isalaysay?

S - Ang una pong bumaril ay si Glenn Gonzales at tinamaan sa katawan itong si Ernesto kaya ako po ay tumakbong palayo pero kita ko pa po ng barilin ulit siya nitong si Glenn hanggang sa tumumba itong si Ernesto at nang nakatumba na siya ay doon siya pinagbabaril ng mga nasa kotse na sina Manolito Gonzales, Ruperto de Villa at si "Boy" Arnaldo Mendoza.[52]

He confirmed before the court such statement and maintained that petitioner was inside the car with Manolito and Ruperto when petitioner shot Ernesto during the incident.[53]

Petitioner, a businessman residing at Cavite Street, Santa Cruz, Manila, testified that on 1 September 1998, at about 9:30 in the morning, Manolito and Glenn arrived in his house at Barangay II, Mataasnakahoy, Batangas.

Manolito and Glenn told him that they will hitch a ride with him in going to Barangay Lumanglipa since he will also go to the said place with his car to buy tilapia from his mother-in-law for the birthday of his son on the following day. While on their way to Barangay Lumanglipa, Manolito and Glenn asked him if they can pass by the house of Ernesto's parents. He agreed. However, upon reaching Barangay Lumanglipa, Manolito and Glenn changed their minds and instead requested him to proceed to the barangay hall of Lumanglipa. While traveling the road leading to the barangay hall, they saw Ruperto in a nearby chapel. Manolito and Glenn told him to stop the car and wait for them. Manolito and Glenn alighted from the car and talked with Ruperto. He drove the car a little farther and parked it beside the road. Later, he went out of the car and decided to go to the house of "Pareng Digo." But before he could go farther, he heard gunshots and saw some persons scampering. He went back inside the car and started the engine. When he maneuvered the car towards the road leading to Barangay II, Matasnakahoy, Manolito, Glenn and Ruperto suddenly appeared and boarded the car. The three, who appeared nervous and jittery, told him to speed up the car. He then asked them, "Bakit, bakit ano bang nangyari?" One of the three whom he could no longer recall told him, "Basta idiretso mo at saka na kami magpapaliwanag sayo" After traveling for a few minutes, one of the three whom he could not also remember, directed him to pull over on the side of the road because they will just talk to somebody. He told the three that he will go ahead and that he was leaving the car to them. He immediately got out of the car and boarded a jeepney bound for Lipa City. Upon seeing a telephone booth along the way, he alighted from the jeepney, entered the telephone booth and called his house at Barangay II, Mataasnakahoy. A person, whom he again failed to recall, answered his call and instructed him to proceed to his house/residence at Sta. Cruz, Manila.

Subsequently, he boarded a bus bound for Manila. Upon reaching his house/residence at Sta. Cruz, Manila, he slept. When he woke up the next morning, his wife told him that he was implicated in the murder of Ernesto.[54]

In support of the foregoing testimonies, the defense presented the respective sworn statements of Ariola and petitioner[55] as its documentary evidence.

Prosecution witness Ciruelas clearly stated in paragraph 8 of his Affidavit dated 2 September 1998 that Ernesto was shot first by Glenn followed by petitioner:

08 - T : Sino naman ang unang bumaril dito kay Ernesto Velasquez kung iyong nakita?

S : Ang una pong bumaril ay si Glenn Gonzales na may armas na maigsing pistola at sumunod na bumaril ay si Arnaldo Boy Mendoza na may armas na maigsing pistola, na sumunod naman ay si Manoling Gonzales na may hawak na armalite at ito namang si Ruperto de Villa ay may armas din na maigsing pistola na bumaril din kay Ernesto Velasquez.

Ciruelas reiterated and confirmed his foregoing statement in his testimony during the trial. Hence, contrary to petitioner's assertion, there is no omission or inconsistency in the sworn statement and court testimony of Ciruelas as regards the said fact.

The fact that none of the other prosecution witnesses corroborated Ciruelas's testimony that petitioner shot Ernesto is inconsequential. It should be emphasized that the testimony of a single witness, if positive and credible, as in the case of Ciruelas, is sufficient to support a conviction even in the charge of murder.[56]

The testimonies of Ciruelas and Dr. Vertido are substantially consistent with each other on material points. Ciruelas testified that Glenn went in front of Ernesto, who was then seated and playing tongits, and shot the latter once. This is compatible with Dr. Vertido's testimony and findings that Ernesto sustained a gunshot wound in the right thigh, the entry point of which was on the front portion of Ernesto's right thigh. Ciruelas also testified that when Ernesto fell and lay down with his face on the ground, Glenn fired more shots at the former, and that

thereafter petitioner, Manolito and Ruperto also shot Ernesto while the victim was lying on the ground. Again, this is in harmony with Dr. Vertido's testimony that Ernesto also sustained gunshot wounds, the entry points of which were on the back portion of Ernesto's body.

Although Dr. Vertido's testimony, that the three gunshot wounds sustained by Ernesto were caused by an M-16 armalite bullets and that the other gunshot wound was probably caused by a .22 caliber bullet, appears to be inconsistent with his other statement that all of these four gunshot wounds have the same diameter, such is only a minor discrepancy and cannot be automatically considered as a ground for acquittal.

It may be true that no bullets from the M-16 armalite rifle used by Manolito were found inside Ernesto's body. It should be stressed, however, that one empty shell of an M-16 armalite rifle was recovered inside the maroon Nissa Sentra Super Saloon with plate number UBU-674 used by petitioner, Glenn, Manolito and Ruperto before, during and after the incident. This is once more consistent with Dr. Vertido's testimony that some of the gunshot wounds sustained by Ernesto were caused by M-16 armalite rifle bullets. To our mind, the conduct of ballistic examination on the deformed slug and empty shells presented as evidence by the prosecution is not indispensable in proving the crime charged in the face of other overwhelming evidence presented.

The foregoing testimonies are in harmony with the documentary and object evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of Ciruelas and Dr. Vertido to be candid and credible. Both courts also found no improper motives on the part of the prosecution witnesses to testify against petitioner.

Likewise vital are the documentary evidence consisting of the (1) sworn statement of Ciruelas attesting that during the incident, he saw petitioner shoot Ernesto; (2) sworn statement of Ariola stating that during the incident, he saw petitioner shoot Ernesto; (3) sworn statement of Gutierrez declaring that during the incident, he saw petitioner, Glenn, Manolito and Ruperto holding firearms while Ernesto was bloodied and lying; (4) sworn statement of Mrs. Velasquez narrating that on the day of the incident, petitioner and Ruperto went to her house and sought Ernesto; (5) certification issued by the Chief of the Firearms and Explosives Division of the Philippine National Police, Camp Crame verifying, among others, that petitioner was a licensed/registered holder of a Pistol Colt Caliber .38, and that the license was issued on 15 June 1995 and expired on November 1997 and has not been renewed since such expiration; (6) findings/autopsy report on the body of Ernesto signed by Dr. Vertido stating that the latter died of severe hemorrhage secondary to gunshot wounds and had also sustained grazing wounds, which, according to the court testimony of Dr. Vertido, may have been caused by a bullet from any type of gun or caliber; (7) anatomical sketch signed by Dr. Vertido indicating that Ernesto sustained grazing wounds on the chest, gunshot wound in the front portion of the right thigh, and three gunshot wounds at the upper back portion of the body; (8) death certificate of Ernesto issued and signed by Dr. Vertido; and (9) sketch of the crime scene drawn and prepared by SPO1 Castillo.

It is also equally important to note the object evidence comprising (1) one live ammunition of Super Caliber .38; (2) four empty shells of Super Caliber .38; (3) one deformed slug of Super Caliber .38; (4) one empty shell of an M-16 armalite recovered from a maroon Nissan Sentra Super Saloon with plate number UBU-674 used by petitioner, Glenn, Manolito and Ruperto before, during and after the incident; and (5) pictures of the maroon Nissan Sentra Super Saloon with plate number UBU-674 which was recovered after the incident.

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 high respect if not conclusive effect.[57] 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.[58]

In utter contrast, the evidence for the defense comprises mainly denials and alibi. Petitioner denied having shot Ernesto. He insisted that on the day of the incident, he merely brought Glenn, Manolito and Ruperto near the chapel of Barangay Lumanglipa, Mataasnakahoy, Batangas where the three alighted; that upon hearing a gunshot, he went inside his car and started the engine; that Glenn, Manolito and Ruperto suddenly boarded again his car; that when he asked them what happened, the three told him to just drive away and they will explain later; and that out of fear, he left his car with the three and went to his house in Sta. Cruz, Manila. Petitioner also posited that the prosecution's evidence is unreliable because Ariola, the adverse witness, stated in his sworn statement that petitioner was inside the car when the latter shot Ernesto, thereby contradicting Ciruelas's testimony that petitioner was outside the car and standing when the latter shot Ernesto. Aside from these negative and self-serving claims, petitioner did not adduce any convincing proof to substantiate and corroborate his defense of denial and alibi.

Denial is inherently a weak defense as it is negative and self-serving. Corollarily, alibi is the weakest of all defenses for it is easy to contrive and difficult to prove. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[59]

Petitioner claims he was inside his car which was parked in front of the chapel at the time of the incident. The chapel was merely four meters away from the crime scene.[60] Being very near the crime scene, it was not physically impossible for him to be there during the incident.

Petitioner's asseveration that the prosecution's evidence is fabricated, by reason of Ariola's testimony being inconsistent with Ciruelas's testimony, will not help his cause because Ariola also mentioned in his sworn statement and during the trial that petitioner was among those who shot Ernesto with a short firearm during the incident. What is certain is the fact that petitioner shot Ernesto.

It is a well-entrenched doctrine in criminal law that, as between denials or alibi and positive testimony on affirmative matters, the latter is accorded greater evidentiary weight.[61]

Apropos the second issue, petitioner argued that he never conspired with Glenn, Manolito and Ruperto in killing Ernesto; that his being with Glenn, Manolito and Ruperto inside a car and fleeing after the incident does not imply conspiracy; that there was no evident premeditation in the killing of Ernesto because he had no ill feelings or prior animosity towards Ernesto or any of the latter's relatives and as such, he had no reason to plan on how to kill Ernesto; and that no abuse of superior strength can be appreciated in the killing of Ernesto.[62]

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons agree to commit a felony and decide to commit it. The presence of conspiracy among the accused can be proven by their conduct before, during or after the commission of the crime showing that they acted in unison with each other, evincing a common purpose or design.[63]

As can be gleaned from the testimonies and sworn statements of the prosecution witnesses, petitioner was seen together with Glenn, Manolito and Ruperto on board a car and was inquiring on Ernesto's whereabouts before the incident. Petitioner was also seen shooting Ernesto right after Glenn shot the latter, and subsequently fled with Glenn, Manolito and Ruperto on board a car. Clearly, the foregoing acts of petitioner before, during and after the incident demonstrate that he was a co-conspirator of Glenn, Manolito and Ruperto.

Evident premeditation qualifies the killing of a person to murder if the following elements are present: (1) the time when the offender was determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his resolve; and (3) a sufficient interval of time between the determination or conception and the

execution of the crime to allow him to reflect upon the consequence of his act and to allow his conscience to overcome the resolution of his will if he desired to hearken to its warning.[64]

All of the foregoing elements and requisites of evident premeditation were satisfactorily established by the prosecution.

First, at about 5:00 in the afternoon of 31 August 1998, Ernesto confronted Glenn and thereafter pushed the latter's left chin after hearing insulting answers from Glenn. Thereafter, Glenn threatened Ernesto, "Humanda ka, babalikan ka namin, papatayin ka namin!" On the following day, 1 September 1998, at around 9:00 in the morning, petitioner together with Glenn, Manolito and Ruperto went to the house of Ernesto's parents and sought Ernesto. This was the time that petitioner and his three cohorts were determined to kill Ernesto.

Second, after being told by Mrs. Velasquez on that same day that Ernesto was in the Mataasnakahoy, petitioner together with Glenn, Manolito and Ruperto proceeded to said place. Upon arriving at 1:30 in the afternoon, petitioner immediately approached Ernesto. Thereafter, petitioner shot Ernesto right after the latter was shot by Glenn. The act of the petitioner and of his three cohorts in locating and shooting Ernesto indicates that they had clung to their determination to kill the victim.

Finally, petitioner and his cohorts manifested their determination to kill Ernesto at the time they went to the house of Ernesto's parents and asked about his whereabouts at 9:00 in the morning of 1 September 1998. On the other hand, petitioner and his cohorts shot Ernesto at about 1:30 in the afternoon of 1 September 1998. Indeed, a gap of four hours between the determination and the execution to kill Ernesto was sufficient for the petitioner and his cohorts to reflect on the consequences of the acts they were about to commit.

Taking advantage of superior strength also qualifies the killing to murder if the offender purposely used excessive force out of proportion to the means of defense available to the person attacked.[65] The evidence for the prosecution had sufficiently proven the existence of this qualifying circumstance. Petitioner, Glenn, Manolito and Ruperto were all armed with pistols and armalite and used the same in shooting Ernesto, whereas the latter was unarmed and in a sitting position playing tongits at the time of the shooting. Verily, petitioner and his cohorts took advantage of their number and weapons against Ernesto.

We observed that the aggravating circumstances of treachery and use of an unlicensed firearm were also alleged in the information. We agree with the RTC and the Court of Appeals that treachery cannot be appreciated in the instant case since treachery presupposes a sudden and unexpected attack on the unsuspecting victim.[66] In the case at bar, the attack on Ernesto was not sudden and expected. Prior to the shooting, petitioner repeatedly asked Ernesto why he slapped Glenn. Ernesto even managed to answer back and replied that he did not slap Glenn. At this stage, Ernesto was already forewarned of the dangers that such questioning brought as well as the presence of petitioner and his cohorts considering that he had a previous quarrel with Glenn. However, we take exception to the ruling of the RTC and the Court of Appeals that the aggravating circumstance of use of unlicensed firearm cannot be appreciated. The prosecution presented a certification issued by the Chief of the Firearms and Explosives Division of the Philippine National Police, Camp Crame, verifying, among others, that petitioner was a licensed/registered holder of a Pistol Colt Caliber .38, and that the license was issued on 15 June 1995 and expired in November 1997 and has not been renewed since then.[67] The incident occurred on 1 September 1998. It also presented one live ammunition of Super Caliber .38, four empty shells of Super Caliber .38, and one deformed slug of Super Caliber .38, all of which matched petitioner's Super Caliber .38.[68]

Regarding the third issue, petitioner elucidated that it took him a while to surrender because of fear; that he was never arrested and had instead surrendered to the authorities; and that the mitigating circumstance of voluntary surrender should be appreciated in his favor.[69]

For voluntary surrender to be appreciated as a mitigating circumstance, the following requisites must concur: (1) that the offender had not been actually arrested; (2) that the offender surrendered himself to a person in authority; and (3) that the surrender was voluntary.[70]

In order for a surrender to be considered as voluntary, the same must be spontaneous in such a manner that it shows the interest of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses necessarily incurred in his search and capture.[71]

In the case at bar, petitioner went into hiding for almost four years before he submitted himself to the authorities.[72] Upon his surrender, he did not acknowledge liability for the killing of Ernesto. As such, his surrender cannot be considered spontaneous.[73] Moreover, his flight after the incident is a circumstance from which an inference of guilt may be drawn.[74]

As regards the fourth issue, petitioner alleged that his former counsel, Atty. Reynaldo Q. Marquez (Atty. Marquez), did not defend him to the fullest and was negligent in handling his case because Atty. Marquez presented as witness Ariola, who, prior to the trial, had executed an affidavit stating that petitioner was one of those who shot Ernesto during the incident. Atty. Marquez also admitted the fact that an empty shell of an armalite bullet was found inside the maroon Nissan Sentra Super Saloon with plate number UBU-674. For these reasons, petitioner claims that he was not able to completely present his defenses and thus he was denied due process.

Petitioner further claimed that the Presiding Judge of the RTC which rendered the assailed decision, Judge Vicente Landicho (Judge Landicho), was partial and biased; that after the assailed RTC Decision was promulgated, he found out that Judge Landicho's cousin, a certain Mayor Celso Landicho (Mayor Landicho), is a relative of Ernesto; that Mayor Landicho's wife introduced his wife to Judge Landicho; that Judge Landicho advised his wife to tell him not to surrender and to mellow first ("magpalamig muna"); that after three years, Judge Landicho recommended Atty. Marquez to him; and that these circumstances show that Atty. Marquez was loyal to Judge Landicho and not to him.[75]

The essence of due process is a hearing before conviction and before an impartial and disinterested tribunal. Due process is satisfied as long as a party is given the reasonable opportunity to be heard and submit any evidence in support of his defense.[76]

The instant case underwent a full-blown trial before the RTC. Petitioner was adequately heard and given opportunity to adduce evidence in support of his defense and to refute the evidence for the prosecution. Relevant and material issues were ventilated before the RTC and the Court of Appeals rendered their respective decisions. Petitioner filed all the necessary pleadings in support of his cause before the said courts.

Atty. Marquez had sufficiently performed his duties in defending petitioner. A perusal of the thick records shows that Atty. Marquez conducted a lengthy direct examination on petitioner and exhaustively cross-examined the witnesses for the prosecution. He also objected to the admissibility of some evidence for the prosecution. He even filed a motion for reconsideration of the RTC Decision convicting petitioner.[77]

It also appears from the records that Atty. Marquez presented the testimony of adverse witness Ariola for the purpose of proving that there was inconsistency in the testimony of the prosecution witnesses and thus the prosecution's evidence was fabricated, to wit:

Atty. Marquez: We are offering the testimony of this witness, first: as an adverse party witness; second: to prove that the evidence of the prosecution as against the accused Arnaldo Mendoza is totally fabricated; third:

we will prove that by the testimony of this witness, the prosecution deliberately suppressed a piece of vital document because had this document been presented it would not have been adverse to the cause of the prosecution. Finally, we are offering the testimony of this witness to prove that the evidence for the prosecution insofar as the alleged participation of Arnaldo Mendoza is diametrically inconsistent with each other in the sense that the testimony of this witness is inconsistent with the testimony of the other eyewitnesses, Your Honor.[78] (Emphases supplied.)

If indeed, as petitioner alleged, Atty. Marquez was still to be considered as negligent or has committed mistakes in presenting the testimony of Ariola and in admitting that one empty shell of an M-16 armalite rifle was found in the car used by petitioner and his cohorts despite the foregoing consideration, such cannot be considered as serious negligence because, as we earlier found, there was no total abandonment of petitioner's cause.

Mere imputation of bias and partiality against a judge is not enough since bias and partiality can never be presumed.[79] There was no evidence showing that the family/relatives of Ernesto had unduly influenced Judge Landicho in convicting petitioner. There was also no proof that Judge Landicho told petitioner not to surrender or "magpalamig muna" and that Judge Landicho recommended Atty. Marquez to petitioner. In the absence of such proofs, petitioner's bare assertion cannot overturn the presumption of regularity in the performance by Judge Landicho of his official duty.[80]

The penalty for murder under Article 248 of the Revised Penal Code is reclusion perpetua to death. As we earlier found, there were evident premeditation, taking advantage of superior strength and use of unlicensed firearm in the killing of Ernesto. Considering that only one between evident premeditation and taking advantage of superior strength is necessary to qualify the killing to murder, the other one becomes a generic aggravating circumstance.[81] There being one generic aggravating circumstance plus the special aggravating circumstance of use of unlicensed firearm, and there being no mitigating circumstance, the penalty, following Article 63(1) of the Revised Penal Code, is death. However, with the effectivity of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the capital punishment of death has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted to petitioner shall be reclusion perpetua. Said section reads:

SECTION 2. In lieu of the death penalty, the following shall be imposed:

- (a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
- (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on petitioner, he is not eligible for parole following Section 3 of said law which provides:

SECTION 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

As regards the civil liability of petitioner, we find the damages awarded and their corresponding amounts to be correct. However, we deem it proper to increase the civil indemnity from P50,000.00 to P75, 000.00 based on prevailing jurisprudence.[82] In addition to the damages awarded, we also imposed on all the amounts of damages an interest at the legal rate of 6% from this date until fully paid.[83]

WHEREFORE, after due deliberation, the Decision of the Court of Appeals dated 30 November 2005 in CA-H.C.

No. 0046 is hereby AFFIRMED with the following MODIFICATIONS: (1) the special aggravating circumstance of use of unlicensed firearm is hereby considered in the killing of Ernesto; (2) the death penalty imposed on petitioner is hereby reduced to reclusion perpetua without eligibility for parole pursuant to Republic Act No. 9346; (3) the civil indemnity of petitioner is increased from P50,000.00 to P75,000.00; and (4) an interest on all the damages awarded at the legal rate of 6% from this date until fully paid is imposed. Costs against petitioner.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Garcia, and Reyes, JJ., concur.

Velasco, Jr., J., on leave.

Nachura, J., no part.

[1] Penned by Associate Justice Mariano C. del Castillo with Associate Justices Portia Aliño-Hormachuelos and Magdangal M. de Leon, concurring; rollo, pp. 52-70.

[2] Id. at 72-73.

[3] CA rollo, pp. 8-29.

[4] Records, p. 389.

[5] Id. at 1-2.

[6] Id. at 107.

[7] TSN, 14 January 2003, pp. 6-8.

[8] TSN, 23 September 2002, pp. 6-12.

[9] Id. at 12-14.

[10] TSN, 12 May 2003, pp. 4-10.

[11] TSN, 8 October 2002, pp. 8-32.

[12] TSN, 17 November 2003, pp. 10-13.

[13] TSN, 21 April 2004, pp. 2-8.

[14] Id. at 14-30.

[15] Id. at 33-35.

[16] Records, p. 29.

[17] Records, pp

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