

PETER TARAPEN Y CHONGOY, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,

G.R. No. 173824. August 28, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Assailed before Us is the Decision[1] of the Court of Appeals in CA-G.R. CR No. 26636, dated 31 January 2006, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Baguio City, Branch 3, convicting petitioner Peter Chongoy Tarapen of the crime of Homicide.

On 9 June 2000, petitioner was charged before the RTC of Baguio City with Frustrated Homicide for attacking and assaulting James Lacbao Pangoden.[3] The day after, the victim died from the injuries he sustained. As a consequence, an amended information was filed on 13 June 2000 charging petitioner with Homicide allegedly committed as follows:

That on or about the 8[th] day of June, 2000, in the City of Baguio, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, and assault JAMES LACBAO PANGODEN, by hitting his head twice with a steel shovel, thereby inflicting upon the latter: Cardio-respiratory arrest secondary to cranio-cerebral injury, which directly caused his death.[4]

The case was raffled to Branch 3. When arraigned on 15 June 2000, petitioner, with the assistance of counsel de oficio, pleaded not guilty to the crime charged.[5]

On 10 October 2000, the pre-trial conference of the case was terminated with the trial court issuing its pre-trial order.[6]

The prosecution presented the following witnesses, namely: (1) Patricia S. Pangoden[7]; (2) Molly J. Linglingen[8]; (3) Silmana Linglingen[9]; (4) Virginia Costales[10]; (5) Dr. Lindo Mensalvas[11]; (6) Dr. Rizal Leo Cala[12]; and (7) Senior Police Officer (SPO) 2 Juanito Meneses II.[13]

The collective testimonies of the witnesses revealed:

At around 7:00 to 7:30 in the morning of 8 June 2000, a dump truck driven by Jimmy Pugoy arrived at Zandueta St., Baguio City, to collect garbage. He was accompanied by petitioner and Edmond Ferrer. The garbage truck came from lower Zandueta St. and proceeded to upper Zandueta St. Upon reaching the Hilltop Market, the truck turned around. During this time, vendors, including the victim James Pangoden, Molly J. Linglingen, Silmana Linglingen and Virginia Costales were peddling their wares along said street. Petitioner alighted from the truck and signaled to the driver to move slowly. Despite guiding the truck, said vehicle ran over the eggplants being sold by Virginia Costales. Petitioner picked up the vegetables and threw them towards the place where James was. This angered James because the flowers he was selling were soiled. An exchange of words ensued between petitioner and James.[14] Petitioner went to the back of the dump truck and got a shovel. He then moved in front

of the truck where James was. While James was facing downwards, petitioner, coming from behind and holding the shovel with two hands, struck James on the head with the same, causing him to fall to the ground in a squatting position. As soon as James raised his head, petitioner hit the former's head again with the shovel.[15] Petitioner then ran away. James was brought to the Baguio General Hospital & Medical Center (BGHMC) in a taxi.

The wife of James, Patricia Pangoden, arrived at the BGHMC and saw her husband in the Emergency Room. Dr. Rizal Leo Cala refused to operate on her husband, saying that it was already hopeless. She then requested for the transfer of her husband to the Saint Louis University (SLU) Hospital. The request was approved, and her husband was transferred to SLU Hospital at 1:30 p.m. James was operated on, and Patricia was told that her husband had no more chance to live. She was advised to bring home James; otherwise, they would just be spending so much. Patricia brought her husband to his hometown in Namatugan, Sudipen, La Union, where he expired on 10 June 2000.[16]

Patricia S. Pangoden testified on the events that happened to her husband from the time he was brought to the hospital until the time he died. She also testified on the expenses she incurred as a result of the incident.[17]

Molly J. Linglingen and Silmana Linglingen, mother and daughter, and co-vendors of James at Zanduetta St., testified that they saw petitioner get a shovel from the rear of the garbage truck, approach James from behind, and hit him with it twice on the head.

Virginia Costales recounted the events prior to her seeing James already slumped on the ground. She narrated that when the garbage truck was going down Zanduetta St., petitioner got off from the truck and guided it. The truck ran over the eggplants she was selling. Petitioner picked them up and threw them to where James was. James, she said, got angry because the flowers he was selling were soiled. Petitioner and James exchanged words. While the two were exchanging words, she transferred her sack of eggplants to a nearby place. It was then that she heard people shouting. When she turned around, she saw James already slumped on the ground oozing with blood.

Dr. Lindo Mensalvas and Dr. Rizal Leo Cala, physicians at the SLU Hospital and BGHMC, respectively, attended to the victim. They respectively issued a medico-legal certificate containing the injuries sustained by the victim.[18]

SPO2 Juanito Meneses II, assigned at Police Community Precinct 1, Baguio City, was the investigator to whom the case of petitioner was turned over. At around 10:00 a.m. of 8 June 2000, the Division Chief of the General Services Office of Baguio City turned the petitioner over to him. SPO2 Meneses disclosed that petitioner admitted to having inflicted injuries on the victim. The police officer disclosed that he did not notice any injury on Peter's body or face. He added that Peter did not request any medical treatment that morning. He brought Peter to the BGHMC for possible identification, but the victim was still unconscious. Upon going back to the police station, he took the statement of the victim's wife. He likewise identified the steel shovel[19] allegedly used in killing the victim.

The prosecution formally offered Exhibits "A" to "H," inclusive, with sub-markings which the trial court admitted.[20]

For the defense, the following took the witness stand: (1) Jimmy Pugoy,[21] (2) petitioner Peter Tarapen,[22] (3) Edmond Ferrer,[23] and (4) Dr. Maryjane Tipayno.[24]

The version of the defense as culled from these witnesses is as follows:

Jimmy Pugoy, petitioner Peter Tarapen and Edmond Ferrer are garbage collectors employed by the General

Services Office of the City of Baguio. At around 3:00 a.m. of 8 June 2000, they started collecting garbage. At around 7:00 a.m., they arrived at Zandueta St. Half of said street was almost occupied by vendors who were selling various goods. In order to collect garbage piled on said street, the truck driven by Jimmy Pugoy had to go up the street then go down. While going down the street, Pugoy kept on honking the truck's horn, causing the vendors selling near the garbage pile to move away, but some of their goods were left behind. Ferrer alighted and started filling up the garbage basket with the use of a shovel. Peter saw a sack of eggplants pinned under the truck being removed by its owner. Peter helped the old woman carry the sack to the side of the road when, all of a sudden, James punched him hard on the right ear, causing him to fall and roll down the street. Peter ended up sitting on the ground. As he was getting up with his hands raised, James punched him again. Peter protested, saying he did not do anything wrong. James answered: "You people from the government are show-off[s]." Peter, still dizzy while getting up and still with hands raised, was kicked by James on the left side of the body. Peter fell on the road and rolled anew.[25] Feeling very dizzy, Peter tried to pick up something to throw at James to stop him, because he (Peter) thought James would kill him. At this moment, Edmond was coming to the aid of Peter, who was in front of the truck. Edmond carried with him the shovel he used to collect garbage. Edmond tried to help Peter stand. He put down the shovel on the ground. While in a sitting position, Peter was able to get hold of the shovel and swing it, hitting James who was approaching him and about to strike with a clenched fist. With the help of the shovel, Peter stood up and tried to leave. When James followed Peter, the latter hit him again with the shovel. Peter saw James boarding a taxi. After feeling a little better, Peter walked to his office and reported the matter to his supervisor.

Peter, accompanied by his supervisor, voluntarily surrendered to the police authorities. Per his request, he was brought to the hospital where he met James's wife who hit him on the back. To avoid trouble, he was brought to the City Jail. Upon posting bail, he went to the hospital for treatment.

Jimmy Pugoy testified on what he allegedly saw that fateful morning. He recounted that while he was maneuvering the garbage truck he was driving at Zandueta St., he saw petitioner Peter Tarapen go down the truck and help an old woman, who was in front of the truck, carry a sack of eggplants. At that moment, a person (James) went near Peter and suddenly punched him on the face, causing him to fall and roll down the street. When Peter stood up with his hands raised, James punched him again on the face, making the latter fall and roll again. Peter stood up a second time with his hands up. This time, he said, James delivered a flying kick, which hit Peter on the stomach. Peter fell and rolled once more. After this, Jimmy no longer saw what happened, because the people had gathered, and he parked the truck. After parking the vehicle, what he saw was a man lying on the ground. He went back to the office and gave a report.

Edmond Ferrer narrated that at around 7:00 a.m. of 8 July 2000, he was with Jimmy Pugoy and Peter Tarapen at Zandueta St. collecting garbage. He was with Peter hanging at the back of the truck. When the vehicle stopped, Peter alighted and went in front of the vehicle. Jimmy also went down, taking with him the shovel and the garbage basket. While Peter was settling some things in front, he placed the garbage inside the basket. After filling up the basket and before he could load it into the truck, he heard people shouting in front of the vehicle. As there was a commotion, he proceeded to the front of the vehicle carrying the shovel he was using. He saw Peter sitting on the ground shaking his head. He went near Peter, put down the shovel and tried to help him stand up. A person approached and was about to hit Peter, when the latter got hold of the shovel, swung it and hit this person. The person remained standing. Peter was able to stand and was turning around to leave, but the person whom he hit with the shovel was about to follow him in order to punch him. Peter hit this person one more time, causing the latter to fall down. Seeing Peter leave, he also left.

Petitioner testified that at the time the incident subject of this case happened, he was in Zandueta St. to collect

garbage. He was riding the garbage truck driven by Jimmy Pugoy. Since the driver was continuously blowing the horn of the vehicle, he went down the truck and saw a sack of eggplants under the vehicle. The owner of the sack of eggplants approached him and asked him to help her. He helped the old woman remove the sack under the truck and carry it to the side of the road. After that, he said someone (James) punched him at the right side of the head, which caused him to fall and sit on the road. As he was getting up with his hands raised, James said, "Nalastog kayo nga taga-gobierno," and then punched him for the second time. He was a little dizzy and was again getting up when he was kicked on the left side of his body. Feeling very dizzy, he tried to pick up something to throw at James. While sitting, he got hold of a shovel which he swung, hitting James. Peter said he got up to run away, but James followed him. It was then that Peter hit him again with the shovel. He went to their office and he was accompanied by his supervisor in surrendering to the police. He added that he asked the policemen to bring him to the hospital, because his ear was aching. It was on 16 July 2000 that he was able to have a medical examination of his ears.

Dr. Maryjane Tipayno, physician at the BGHMC, testified that she performed an audio logic test on petitioner on 16 June 2000. She found out that petitioner had mild hearing loss on the left ear and severe hearing loss on the right ear.[26] She said that the hearing condition of petitioner could not have been self-inflicted. She explained that the hearing loss in both ears could have started years before. She added that it was Dr. Vinluan who interviewed the petitioner, and that it was petitioner who told him that the hearing loss in his right ear was due to a blunt trauma.

After formally offering Exhibits "1" and "2" and with the admission thereof by the trial court, the defense rested its case.[27]

As rebuttal witnesses, the prosecution presented Molly Linglingen, who said that petitioner was standing up when he hit James twice on the head with a shovel. He explained that James was standing with his back turned, when Peter came from behind and hit him.[28]

On 20 June 2002, the trial court convicted petitioner of Homicide in a decision the dispositive portion of which reads:

WHEREFORE, the Court finds accused Peter Tarapen GUILTY beyond reasonable doubt for the crime of Homicide and he is hereby sentenced to suffer the penalty of imprisonment at the National Penitentiary, Muntinlupa City from Fourteen (14) Years as Minimum to Twenty (20) Years as Maximum. Peter Tarapen shall also indemnify private complainant Patricia Pangoden the following amounts: One Hundred Ninety Five Thousand Eighty Pesos and 05/100 (P195,080.05), representing the expenses for hospitalization, funeral and burial; Moral Damages to Patricia Pangoden in the amount of Three Hundred Thousand Pesos (P300,000.00) and Death Indemnity of Fifty Thousand Pesos (P50,000.00), and Loss of Earning Capacity in the amount of Three Million One Hundred Thirty Five Thousand Seven Hundred Twenty Pesos (P3,680,800.05), plus costs of suit against the accused.[29]

The trial court gave credence to the testimonies of the prosecution witnesses Molly J. Linglingen, Silmana Linglingen and Virginia Costales as against the testimonies of defense witnesses Jimmy Pugoy, petitioner Peter Tarapen and Edmond Ferrer. The trial court found the prosecution's version of the incident credible. The trial court said Virginia Costales saw the first part of the incident, which was the heated argument between petitioner and the victim involving the victim's soiled goods, while Molly J. Linglingen and Silmana Linglingen witnessed the second part of the incident when petitioner went to the back portion of the garbage truck and got a shovel with which he hit the victim from the back, twice on the head, resulting in his death. Having had the opportunity to observe them, it was convinced that they were telling the truth vis-à-vis the defense witnesses who were lying, as can be seen from their hesitant answers and evasive looks when they testified for the petitioner who was a

co-employee.

The trial court likewise did not appreciate self-defense in favor of petitioner, who struck the unarmed victim from the back, twice on the head.

On 8 July 2002, petitioner filed a Motion for Reconsideration,[30] which the trial court denied on 16 July 2002.[31] On 23 July 2002, petitioner filed a Notice of Appeal.[32] In an Order[33] dated 29 July 2002, the trial court, finding the notice of appeal to have been seasonably filed, forwarded the records of the case to the Court of Appeals.

On 31 January 2006, the Court of Appeals rendered a decision, affirming with modification the decision of the trial court convicting petitioner Peter Chongoy Tarapen of the crime of Homicide, the decretal portion reading:

WHEREFORE, in view of all the foregoing, the decision dated June 20, 2002 of Branch 3 of the Regional trial Court of Baguio City in Criminal Case No. 17792-R finding accused-appellant Peter Tarapen y Chongoy guilty beyond reasonable doubt of the crime of homicide is AFFIRMED with modification. Accused-appellant is sentenced to suffer the penalty of eight (8) years of prision mayor, AS MINIMUM, to fourteen (14) years of reclusion temporal, AS MAXIMUM, and ordered to pay the heirs of the victim James Lacbao Pangoden the following amounts: P51,549.25 in actual damages, P50,000.00 as moral damages, P50,000.00 as civil indemnity and the sum of P1,960,200.00 representing lost earnings.[34]

On 8 March 2006, petitioner filed a Motion for Reconsideration,[35] on which the Office of the Solicitor General (OSG) filed its Comment.[36] On 6 July 2006, the Court of Appeals denied said motion.[37]

On 31 August 2006, petitioner, via registered mail, filed a petition for review with this Court, seeking the reversal of the decision of the Court of Appeals.[38]

In our Resolution[39] dated 2 October 2006, respondent People of the Philippines, through the OSG, was required to file its Comment on the petition. After three motions for extension to file comment on the petition, which were granted by this Court, the OSG filed its Comment on 5 February 2007.[40] On 12 March 2007, petitioner was required to file a Reply to the Comment, which he did on 11 December 2007.[41]

On 18 February 2008, the Court resolved to give due course to the petition for review on certiorari and required the parties to submit their respective memoranda within thirty (30) days from notice. Petitioner and respondent filed their respective memoranda on 2 May 2008 and 10 April 2008.[42]

Petitioner assails his conviction, arguing that both trial courts:

- Erred in giving credence to the prosecution witnesses, despite the grave inconsistencies in their testimonies and not considering the testimonies of the witnesses for the defense showing manifest bias against the accused.
- Erred in not acquitting the accused when the defense had sufficiently proved the existence of facts proving that indeed the accused was defending himself from James Pangoden.
- Erred in not acquitting the accused based on reasonable doubt.[43]

On the first assigned error, petitioner contends that the testimonies of Molly and Silmana Linglingen that there was no prior quarrel or exchange of words between petitioner and James before the former hit the latter with a shovel, are contrary to human experience, because petitioner could not have taken the life of James, whom he did not personally know, for no reason at all.

This contention is untenable.

A review of the testimonies of both Molly and Silmana Linglingen shows they never said that petitioner and the

victim did not have any prior quarrel or exchange of words before Peter hit James with the shovel. What they said was that they never witnessed any quarrel or exchange of words between Peter and James. They, however, declared in unison that they saw petitioner get a shovel from the back of the garbage truck and, coming from behind, twice struck James on the head with it. Both Molly and Silmana Linglingen never witnessed the events prior to Peter's act of getting the shovel. This void was substantially filled up by the testimony of Virginia Costales, who actually witnessed the altercation between the petitioner and the victim. Through the testimony of Mrs. Costales, it became clear why petitioner got the shovel, which he used in striking James twice on the head. By combining the testimonies of the three ladies, a picture of the incident has been wholly painted. The rage that Peter had in him was brought about by his squabble with James. The defense cannot, therefore, claim that Peter took the life of James for no reason at all.

Petitioner brands Molly and Silmana Linglingen as biased witnesses, thus, unreliable, because they were town mates and co-vendors of the victim. The fact that these two witnesses were the victim's town mates and co-vendors did not necessarily make them biased witnesses. It is well-settled that the mere relationship of a witness to the victim does not impair the witness' credibility. On the contrary, a witness' relationship to a victim of a crime would even make his or her testimony more credible, as it would be unnatural for a relative, or a friend as in this case, who is interested in vindicating the crime, to accuse somebody other than the real culprit.[44] A witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false.[45] To warrant rejection of the testimony of a relative or friend, it must be clearly shown that, independently of the relationship, the testimony was inherently improbable or defective, or that improper or evil motives had moved the witness to incriminate the accused falsely.[46]

The friendship of Molly and Silmana Linglingen with the victim, per se, did not impair their credibility. We, like both lower courts, are convinced that they were telling the truth. Moreover, the defense failed to show any evidence that prosecution witnesses Molly and Silmana Linglingen had improper or evil motives to testify falsely against petitioner. This being the case, their testimonies are entitled to full faith and credit.

The defense accuses the prosecution witnesses of deliberately suppressing material evidence favorable to the petitioner. It thus argues that it may be safely presumed that such evidence, having been willfully suppressed, would be adverse if produced.

We do not find any suppression of evidence by the prosecution. The defense failed to specify which evidence was suppressed. It simply made a general statement that the prosecution witnesses allegedly did not tell the truth and thus deliberately suppressed material evidence favorable to the petitioner. The adverse presumption of suppression of evidence is not applicable when (1) the suppression is not willful; (2) the evidence suppressed or withheld is merely corroborative or cumulative; (3) the evidence is at the disposal of both parties; and (4) the suppression is an exercise of a privilege.[47] In the case at bar, the prosecution witnesses who allegedly suppressed material evidence were presented in court and were cross-examined by the defense counsel. How then can the defense claim there was suppression? The defense counsel was able to question these witnesses, but failed to elicit the answer he wanted or needed to hear for the exoneration of his client.

The defense attacks the credibility of Virginia Costales by pointing out that her testimony in court, that she did not see petitioner and the victim engage in a fistfight, contradicts her declaration in her sworn statement that that two engaged in a fistfight.

Such inconsistency will not discredit her. It is settled that certain discrepancies between declarations made in an affidavit and those made on the witness stand seldom could discredit the declarant. Sworn statements, being taken

ex parte, are almost always incomplete and often inaccurate for various reasons, sometimes from partial suggestion or for want of suggestion and inquiries. They are generally inferior to the testimony of the witness given in open court. Our case law is unequivocal in saying that the testimony of a witness prevails over an affidavit. In short, affidavits are generally subordinated in importance to open-court declarations; or, more bluntly stated, whenever there is inconsistency between an affidavit and the testimony of a witness in court, the testimony commands greater weight.[48] The Court has consistently ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects that would justify the reversal of a judgment of conviction.[49] In this case, when Mrs. Costales was confronted with this contradiction, she explained that she never told the police that the petitioner and the victim had a fistfight. What she said was they had a quarrel; that is, they faced each other and exchanged words.

The defense tries to destroy the version of Molly and Silmana Linglingen that the victim was hit from behind by arguing that same is not corroborated by medical findings. Molly and Silmana Linglingen's claim that James was hit on the right side of the head was, according to the defense, negated by the findings of Dr. Mensalvas that James suffered injuries on the "left frontoparietal and left frontotemporo parietal" areas of his head. The findings of Dr. Mensalvas mean that James was facing Peter when hit by the shovel contrary to the prosecution's claim that James was hit by Peter from behind.

We do not agree.

The defense relies too much on the findings made by Dr. Lindo Mensalvas and completely omits the findings made by Dr. Rizal Leo Cala. It must not be forgotten that the victim was brought to two hospitals where the attending doctors issued separate medico-legal certificates. The medico-legal certificate[50] issued by Dr. Cala of the BGHMC was marked Exh. "D." The one issued by Dr. Mensalvas was marked Exh. "C."

On the witness stand, Dr. Cala read his findings as follows:

"Skull Fracture" meaning there is a break in the skull bone, "Linear" which is a straight line fracture, "parietal" area on the right side of the head, then we have "Epidural hematoma" it is a blood clot at the right side of the head.[51]

When cross-examined, he explained his findings as follows:

q Both injuries you found were on the front parietal area?

a Yes, Sir.

q Will you please demonstrate to us?

a (Witness demonstrating by pointing to the right side of his head.)

q Doctor, while you were demonstrating, the linear fracture, is it perpendicular to the head?

a I am sorry but it was injury to the right side of the head, Sir.

q Only part of the right ear?

a Yes, sir.

q If I am facing you, it is on your?

a Right, Sir.

q Right side on your part. Did you find any injury on the left side?

a

No, Sir.[52]

From the medico-legal certificate issued by Dr. Cala and with his testimony in court, it is clear that the victim suffered injuries on the right side of his head. Thus, the claim of Molly and Silmana Linglingen that the victim was struck from behind on the right side of his head is consistent with the findings of Dr. Cala.

Dr. Mensalvas, on the other hand, testified that the victim sustained four injuries, three of which were on the left side of the head and one on the right side. The medical certificate he issued states that the victim was confined for the following injuries:

- ACCI; CEREBRAL CONTOUSION
- EPIDURAL HEMATOMA, LEFT FRONTO-PARIETAL AREA
- SUTURED SCALP LACERATION, RIGHT TEMPORO-PARIETAL AREA
- SCALP CONTOUSION, LEFT FRONTO-TEMPORO PARIETAL AREA WITH UNDERLYING LINEAR FRACTURE OF THE SKULL EXTENDING FROM THE LEFT FRONTAL TO THE LEFT TEMPORAL BONE.[53]

The question now is: which medical findings should this Court believe?

This Court believes in the findings made by Dr. Cala as contained in the medico-legal certificate he issued showing that the victim suffered injuries on the right side of his head, consistent with the declarations of prosecution witnesses that the victim was, from behind, struck with a shovel twice on the right side of the head. We give more weight to this medical certificate, because the same was issued by a government doctor. By actual practice, only government physicians, by virtue of their oaths as civil service officials, are competent to examine persons and issue medical certificates which will be used by the government.[54] As such, the medical certificate carries the presumption of regularity in the performance of his functions and duties. Moreover, under Section 44, Rule 130,[55] Revised Rules of Court, entries in official records made in the performance of official duty are prima facie evidence of the facts therein stated. Dr. Cala's findings that the victim sustained injuries on the right side of his head are, therefore, conclusive in the absence of evidence proving the contrary, as in this case. We cannot consider the contents of the medical certificate issued by Dr. Mensalvas sufficient to controvert the findings of Dr. Cala. As held by this Court, an unverified medical certificate not issued by a government physician is unreliable.[56]

Even assuming *arguendo* that we give more weight to the medical certificate issued by Dr. Mensalvas, this does not mean that the testimonies of Molly and Silmana Linglingen shall be disbelieved. It is noted that Dr. Mensalvas testified that the victim sustained a wound on the right side of his head, possibly caused by a steel shovel.[57] Such a finding is consistent with the claim of Molly and Silmana Linglingen that the victim was hit on the right side of the head. Though there can be inconsistencies of the testimonies of the witnesses with Dr. Mensalvas's other findings (i.e., injuries on the left portion of the head) this does not mean that we should totally doubt and discard the other portions of their testimonies.

Well-settled is the rule that the testimony of a witness may be believed in part and disbelieved in another, depending on the corroborative evidence or the probabilities and improbabilities of the case. Where a part of the testimony of a witness runs counter to the medical evidence submitted, it is within the sound discretion of the court to determine which portions of the testimony to reject as false and which to consider worthy of belief.[58]

From the two medical certificates issued, what cannot be doubted is the fact that the victim sustained head

injuries, whether on the left or the right, which caused his demise.

We find the testimonies of the prosecution eyewitnesses more credible and convincing than those of the defense eyewitnesses. When it comes to credibility, the trial court's assessment deserves great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[59]

The Court of Appeals further affirmed the findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. We find no compelling reason to deviate from their findings.

Petitioner claims that the trial court judge was not able to observe the demeanor of the prosecution witnesses, because they were looking at the court interpreter when they were testifying. We find this untenable. The trial court judge was emphatic in saying that he had the chance to see the face of the witness while she testified.[60]

On the second and third assigned errors, petitioner admits killing James but invokes self-defense. He claims that the victim was the unlawful aggressor and that he (petitioner) did not provoke the victim.

Article 11, paragraph (1) of the Revised Penal Code, provides for the elements and/or requisites in order that a plea of self-defense may be validly considered in absolving a person from criminal liability, viz:

ART. 11. Justifying circumstances. - The following do not incur any criminal liability:

- Anyone who acts in defense of his person or rights, provided that the following circumstances concur;

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

Having admitted that he killed James, the burden of evidence that one acted in self-defense shifted to petitioner. Like an alibi, self-defense is inherently weak, for it is easy to fabricate.[61] It is textbook doctrine that when self-defense is invoked, the burden of evidence shifts to the accused to show that the killing was justified, and that he incurred no criminal liability therefor. He must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence, for, even if the latter were weak, it could not be disbelieved after his open admission of responsibility for the killing. Hence, he must prove the essential requisites of self-defense as aforementioned.[62]

Unlawful aggression is a condition sine qua non for the justifying circumstance of self-defense, whether complete or incomplete.[63] Unlawful aggression presupposes an actual, sudden, and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude.[64] There must be actual physical force or a threat to inflict physical injury. In case of a threat, it must be offensive and positively strong so as to display a real, not imagined, intent to cause injury.[65]

We agree with the Court of Appeals that petitioner failed to clearly and convincingly prove self-defense, whether complete or incomplete.

We confirm the observation of the trial court. A circumspect scrutiny of accused-appellant's version of what happened likewise leaves this Court unconvinced that he killed the victim James Pangoden in self-defense.

First, accused-appellant's claim that the victim James Pangoden, suddenly and without provocation, boxed him on his right ear is simply unbelievable. By his own account, he (accused-appellant) was at that moment helping a road vendor carry her sack of eggplants away from the path of the truck. If this is true, then his testimony that James Pangoden attacked and boxed him for no reason at all loses credibility. Testimonies to be believed must not only come from the mouth of credible witnesses but should by themselves be credible, reasonable, and in accord with human experience.

Second, it is likewise inconceivable how accused-appellant could have hit the victim James Pangoden twice in the head while he (accused-appellant) was allegedly in a sitting position and holding the shovel by the middle part of its shaft. Interestingly also, while accused-appellant and his witness testified that he was in a "sitting" position when he hit James Pangoden with the shovel, accused-appellant portrayed a different account when asked during cross-examination to demonstrate how he hit the victim, viz:

Q:

Now, how did you hit Pangoden with the shovel, demonstrate it to the Court. All right you can step down from the witness stand (Witness demonstrating.)

For the record, witness was in a kneeling position when he got the shovel.

A:

I was down on the ground, and I was groping (sic) to somebody and I was able to get hold of the shovel, that was the time I swang (sic) it towards him.

Q: You have not demonstrated how you hit Pangoden with the shovel?

For the record, witness is in a kneeling position when he allegedly picked up the shovel holding it in the middle part. With his two hands and swang (sic) it upwards towards his left.

For the record, accused held the shovel on the middle part of the shaft, your Honor, not on the handle.

Third, it simply goes against the grain of human experience for the victim James Pangoden to persist in his attack against accused-appellant after getting hit in the head with a steel shovel, considering that he is unarmed and had nothing to match accused-appellant's weapon on hand. That James Pangoden still had the resolution and power for a second assault on accused-appellant, after getting hit with a steel shovel in the head, flouts ordinary human capacity and nature. In contrast, accused-appellant would claim that he "fell down" and "felt dizzy" after getting boxed on the right side of his head by James Pangoden with his bare fist.

Fourth, accused-appellant himself admitted walking away from the crime scene immediately after the incident. As we see it, this actuation on his part is contrary to his assertion of self-defense. Flight strongly indicates a guilty mind and betrays the existence of a guilty conscience, for a righteous individual will not cower in fear and unabashedly admit the killing at the earliest possible opportunity if he were morally justified in doing so.

Finally, the nature and number of the fatal injuries inflicted upon James Pangoden negate accused-appellant's claim of self-defense. Said victim suffered cerebral contusion, epidural hematoma, scalp laceration and skull fracture, which directly caused his death. If accused-appellant hit the victim just to defend himself, it certainly defies reason why he had to aim for the head and do it twice. Indeed, the nature, number and location of the wounds sustained by the victim belie the assertion of self-defense since the gravity of said wounds is indicative of a determined effort to kill and not just to defend.

x x x x

But even assuming arguendo that accused-appellant was able to establish the element of unlawful aggression, still,

this Court will rule out self-defense.

It is undisputed that James Pangoden was unarmed while accused-appellant was armed with a steel shovel. There was no reasonable necessity for accused-appellant to use a steel shovel to repel the attack of an unarmed man. Moreover, the eyewitnesses' account of how accused-appellant uncaringly threw the soiled eggplants towards the direction of James Pangoden's goods would negate the absence of sufficient provocation on the part of accused-appellant. Thus, the second and third requisites for self-defense to be successfully invoked, namely, reasonable necessity of the means employed to repel the attack and lack of sufficient provocation on the part of the accused, are not present in this case.[66]

We now go to the imposition of the penalty. We agree with the Court of Appeals when it appreciated in favor of the petitioner the mitigating circumstance of voluntary surrender. It was established that a few hours after the incident, petitioner submitted himself to his supervisors, who, in turn, surrendered him to the police authorities.

Petitioner is guilty of Homicide for having killed James Pangoden. The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. However, considering that there is one mitigating circumstance and no aggravating circumstance in the commission of the crime, the imposable penalty, following Article 64(2) of the Revised Penal Code, is reclusion temporal in its minimum period or within the range of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed shall be taken from the minimum period of reclusion temporal, while the minimum shall be taken from within the range of the penalty next lower in degree, which is prision mayor or from six (6) years and one (1) day to twelve (12) years.

The Court of Appeals sentenced petitioner to suffer the penalty of eight (8) years of prision mayor, as minimum, to fourteen (14) years of reclusion temporal, as maximum. We find this to be in order.

With respect to award of damages, the trial court awarded to the heirs of the victim the following amounts: P195,080.05 as actual damages; P300,000.00 as moral damages; P50,000.00 as death indemnity; and P3,135,720.00 for loss of earning capacity.

The Court of Appeals, except for the award of death indemnity, reduced the awards given by the trial court as follows: P51,549.25 as actual damages; P50,000.00 as moral damages and P1,960,200.00 for lost income.

When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[67]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[68] Under prevailing jurisprudence,[69] the award of P50,000.00 to the heirs of the victim as civil indemnity is in order.[70]

As to actual damages, the heirs of the victim are entitled thereto, because said damages amounting to P51,549.25 were duly proved by receipts. It is necessary for a party seeking actual damages to produce competent proof or the best evidence obtainable, such as receipts, to justify an award therefor.[71]

Moral damages must also be awarded because these are mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[72] The award of P50,000.00 as moral damages is in order.

The award of P25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[73] Under Article 2224 of the Civil Code, 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.[74] In the case on hand, temperate damages cannot be awarded, because evidence of expenses for burial and funeral has been presented for which actual damages have been awarded.

As regards exemplary damages, Article 2230 of the Civil Code allows the award thereof as part of the civil liability when the crime was committed with one or more aggravating circumstances.[75] There being no aggravating circumstance that accompanied the commission of the crime, exemplary damages cannot be awarded.

The computation of the Court of Appeals with respect to lost earning capacity is correct. At the time of his death, the victim was 31 years old. His gross annual income was P120,000.00 because he was earning P10,000.00 monthly. Living expenses are estimated at 50% of the gross annual income. Loss of earning capacity is computed by applying the following formula:[76]

Net Earning Capacity = life expectancy x [Gross Annual - living expenses [2/3(80-age Income (GAI) (50% of GAI)] at death]]

= [2/3(80-31)] x [(GAI) - (50% of GAI)]

= 2 (49) x [P120,000 - P60,000] 3

= [98/3] x [P60,000]

= [32.67] x [P60,000]

Net Earning Capacity of the victim = P1,960,200.00

WHEREFORE, all the foregoing considered, the decision of the Court of Appeals in CA-G.R. CR No. 26636, dated 31 January 2006, is AFFIRMED in toto. Costs against the petitioner.

SO ORDERED.

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

* Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 30 October 2007.

[1] Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Edgardo P. Cruz and Sesinando E. Villon, concurring; CA rollo, pp. 131-145.

[2] Records, pp. 347-358.

[3] Id. at 1.

[4] Id. at 15.

[5] Id. at 51.

[6] Id. at 63-64.

[7] TSN, 12 February 2001.

[8] TSN, 7 May 2001.

[9] TSN, 8 May 2001.

- [10] Id.
- [11] TSN, 21 May 2001.
- [12] TSN, 28 May 2001.
- [13] Id.
- [14] TSN, 8 May 2001, pp. 35-37.
- [15] TSN, 7 May 2001, pp. 11-16; 8 May 2001, pp. 5-7, 12-13, 38.
- [16] TSN, 12 February 2001, pp.5-9; Exh. B; records, p. 230.
- [17] Id. at 9-17.
- [18] Exh. C - Certificate issued by Dr. Mensalvas (SLU Hospital - Private Hospital); records, p. 231.
Exh. D - Certificate issued by Dr. Cala (BGHMC - Government Hospital); records, p. 232.
- [19] Exh. "A."
- [20] Records, pp. 226-229, 242.
- [21] TSN, 12 February 2002.
- [22] TSN, 18 February 2002.
- [23] TSN, 26 February 2002.
- [24] TSN, 12 March 2002.
- [25] TSN, 12 February 2002, pp. 4-8,
- [26] Exhs. "A" and "B"; records, pp. 312-313.
- [27] Records, pp. 311 and 321.
- [28] TSN, 23 April 2002.
- [29] Records, p. 358.
- [30] Id. at 362-366.
- [31] Id. at 372.
- [32] Id. at 373.
- [33] Id. at 374.
- [34] CA rollo, pp. 144-145.
- [35] Id. at 146-150.
- [36] Id. at 153-154.
- [37] Id. at 158-159.
- [38] Rollo, pp. 9-31.
- [39] Id. at 67.

[40] Id. at 78-94.

[41] Id. at 98-108.

[42] Id. at 111-128, 129-153.

[43] Id. at 14.

[44] *People v. Romero*, 459 Phil. 484, 499 (2003).

[45] *People v. Ulgasan*, 390 Phil. 763, 778 (2000).

[46] *People v. Daen, Jr.*, 314 Phil. 280, 291 (1995).

[47] *People v. De Jesus*, G.R. No. 93852, 24 January 1992, 205 SCRA 383, 391.

[48] *People v. Ortiz*, 413 Phil. 592, 611 (2001).

[49] *People v. Sorila, Jr.*, G.R. No. 178540, 27 June 2008.

[50] Exh. "D"; Records, p. 232.

[51] TSN 28 May 2001, p. 9.

[52] Id. at 13.

[53] Exh. "C"; Records, p. 231.

[54] *People v. Court of Appeals*, G.R. No. 144332, 10 June 2004, 431 SCRA 610, 621.

[55] SEC. 44. Entries in official records. - Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.

[56] *People v. Court of Appeals*, supra note 54.

[57] TSN, 22 May 2001, p. 11.

[58] *People v. Cantuba*, 428 Phil. 817, 828 (2002).

[59] *People v. Escultor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.

[60] TSN, 8 May 2001, p. 31.

[61] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 735.

[62] *Sanchez v. People*, G.R. No. 161007, 6 December 2006, 510 SCRA 365, 369.

[63] *Toledo v. People*, G.R. No. 158057, 24 September 2004, 439 SCRA 94, 109.

[64] *People v. Cario*, 351 Phil. 644, 659 (1998).

[65] *Martinez v. Court of Appeals*, G.R. No. 168827, 13 April 2007, 521 SCRA 176, 195.

[66] Rollo, pp. 53-56.

[67] *People v. Beltran, Jr.*, supra note 61.

[68] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.

- [69] People v. Buban, G.R. No. 170471, 11 May 2007, 523 SCRA 118, 134.
- [70] People v. Pascual, G.R. No. 173309, 23 January 2007, 512 SCRA 385, 400.
- [71] People v. Jamiro, 344 Phil. 700, 721-722 (1997).
- [72] People v. Bajar, 460 Phil. 683, 700 (2003).
- [73] People v. Eling, G.R. No. 178546, 30 April 2008.
- [74] People v. Surongon, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.
- [75] People v. Eling, *supra* 73.
- [76] People v. Nabong, G.R. No. 172324, 3 April 2007, 520 SCRA 437, 456-457.

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