

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RESTITUTO CARANDANG, HENRY MILAN AND JACKMAN CHUA, ACCUSED-APPELLANTS.

G.R. No. 175926. July 06, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is an appeal by Henry Milan and Jackman Chua from the Decision [1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 01934 dated May 10, 2006. Said Decision affirmed that of the Regional Trial Court (RTC) convicting them and one Restituto Carandang for two counts of murder and one count of frustrated murder in Criminal Cases No. Q-01-100061, Q-01-100062 and Q-01-100063, the Informations for which read:

Criminal Case No. Q-01-100061

That on or about the 5[th] day of April 2001, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, did then and there, willfully, unlawfully and feloniously with intent to kill, taking advantage of superior strength and with treachery and evident premeditation, attack, assault and employ personal violence upon the person of PO2 DIONISIO ALONZO Y SALGO, by then and there shooting the latter several times with the use of a firearm of unknown caliber hitting him on the different parts of the body, thereby inflicting upon him serious and mortal gunshot wounds which were the direct and immediate cause of his death, to the damage and prejudice of the immediate heirs of said PO2 DIONISIO ALONZO Y SALGO.

That the crime was committed in contempt of or with insult to the public authorities. [2]

Criminal Case No. Q-01-100062

That on or about the 5[th] day of April, 2001, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, did then and there, willfully, unlawfully and feloniously with intent to kill, taking advantage of superior strength and with treachery and evident premeditation, attack, assault and employ personal violence upon the person of SPO2 WILFREDO RED Y PILAR, by then and there shooting the latter several times with the use of a firearm of unknown caliber, hitting him on the different parts of the body and as soon as the said victim fell on the ground, by placing a hand grenade (sic) underneath the body which directly caused an explosion and mutilated the body which directly caused the death of SPO2 WILFREDO RED Y PILAR, to the damage and prejudice of the heirs of the victim in such amount as may be awarded to them under the provisions of the Civil Code.

That the crime was committed in contempt of or with insult to the public authorities. [3]

Criminal Case No. Q-01-100063

That on or about the 5[th] day of April, 2001, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill with evident premeditation and with treachery, did then and there willfully, unlawfully and feloniously, assault, attack and

employ personal violence upon the person of SPO1 WILFREDO MONTECALVO Y DALIDA, by then and there shooting the latter with the use of a firearm of unknown caliber, hitting him on his neck, thereby inflicting upon him serious and mortal injuries, the offender thus performing all the acts of execution which would have produced the crime of murder as a consequence, but nevertheless did not produce it by reasons or causes independent of the will of the perpetrators, that is the timely and able medical assistance rendered to said SPO1 WILFREDO MONTECALVO Y DALIDA, to the damage and prejudice of the said offended party.

That the crime was committed in contempt of or with insult to the public authorities. [4]

On May 15, 2001, accused-appellants Carandang, Milan and Chua pleaded not guilty to the crimes charged.

The prosecution evidence, culled from the testimonies of Senior Police Officer (SPO) 1 Wilfredo Montecalvo, SPO1 Rodolfo Estores, Police Senior Inspector (P/Sr. Insp.) Virgilio Calaro, P/Supt. Manuel Roxas and Dr. Wilson Tan, yielded the following version of the facts:

In the afternoon of April 5, 2001, the drug enforcement unit of the La Loma Police Station 1 received a request for assistance from the sister of accused Milan regarding a drug deal that would allegedly take place in her house at Calavite St., Brgy. Salvacion, Quezon City. The station commander called SPO2 Wilfredo Pilar Red and instructed him to talk to Milan's sister, who was in their office. SPO2 Red, accompanied by Police Officer (PO) 2 Dionisio Alonzo, SPO1 Estores and SPO1 Montecalvo, talked to Milan's sister. Thereafter, SPO2 Red formed a team composed of the officers who accompanied him during the interrogation, with him as team leader. The team received further instructions from the station commander then proceeded to Calavite Street aboard two vehicles, a mobile patrol car and an unmarked car. [5]

When the team reached the place at around 4:00 p.m., [6] they alighted from their vehicles and surrounded Milan's house. SPO1 Montecalvo's group went to the left side of the house, while SPO2 Red's group proceeded to the right. The two groups eventually met at the back of the house near Milan's room. The door to Milan's room was open, enabling the police officers to see Carandang, Milan and Chua inside. SPO2 Red told the group that the persons inside the room would not put up a fight, making them confident that nothing violent would erupt. However, when the group introduced themselves as police officers, Milan immediately shut the door. [7]

PO2 Alonzo and SPO2 Red pushed the door open, causing it to fall and propelling them inside the room. PO2 Alonzo shouted "Walang gagaw!" Suddenly, gunshots rang, hitting PO2 Alonzo and SPO2 Red who dropped to the floor one after the other. Due to the suddenness of the attack, PO2 Alonzo and SPO2 Red were not able to return fire and were instantly killed by the barrage of gunshots. SPO1 Montecalvo, who was right behind SPO2 Red, was still aiming his firearm at the assailants when Carandang shot and hit him. SPO1 Montecalvo fell to the ground. SPO1 Estores heard Chua say to Milan, "Sugurin mo na!" Milan lunged towards SPO1 Montecalvo, but the latter was able to fire his gun and hit Milan. SPO1 Estores went inside the house and pulled SPO1 Montecalvo out. [8]

Reinforcements came at around 4:30 p.m. upon the arrival of P/Sr. Insp. Calaro, Chief Operations Officer of the La Loma Police Station 1, and P/Supt. Roxas, the Deputy Station Commander of Police Station 1 at the time of the incident. [9] SPO1 Montecalvo was brought to the Chinese General Hospital. Milan stepped out of the house and was also brought to a hospital, [10] but Carandang and Chua remained holed up inside the house for several hours. There was a lengthy negotiation for the surrender of Carandang and Chua, during which they requested for the presence of a certain Colonel Reyes and media man Ramon Tulfo. [11] It was around 11:00 p.m. to 12:00 midnight when Carandang and Chua surrendered. [12] SPO2 Red and PO2 Alonzo were found dead inside the house, their bodies slumped on the floor with broken legs and gunshot and grenade shrapnel wounds. [13]

Dr. Winston Tan, Medico-Legal Officer of the Philippine National Police (PNP) Crime Laboratory, conducted the

post-mortem examination of the bodies of SPO2 Red and PO2 Alonzo. He found that the gunshot wounds of Red and Alonzo were the cause of their deaths. [14]

According to SPO1 Montecalvo's account, Dr. Bu Castro of the Chinese General Hospital operated on him, removing a bullet from the right portion of his nape. SPO1 Montecalvo's hospitalization expenses amounted to P14,324.48. He testified that it was a nightmarish experience for him as he feared that he might be paralyzed later on. [15]

The defense presented the three accused as witnesses, testifying as follows:

Carandang claims that he had no firearm during the incident, and that it was the police officers who fired all the shots. He was in Milan's house during the incident in order to ask Milan to accompany him to convert his cellular phone's SIM card. When he arrived at Milan's place, he found Milan and Chua playing a card game. A short time later, there was banging on the door. The door of the house was destroyed and gunfire suddenly erupted, prompting him to take cover under a bed. Chua cried out to him that he was hit and that he might lose blood. Milan ran outside and sustained injuries as well. There was an explosion near the door, causing burns on Carandang's left arm. Gunfire continued coming from different directions for two to three minutes. Suddenly, the place became dark as the lights went out. [16]

Since gunshots were still heard every now and then, Carandang stayed in the house and did not come out. Col. Tor, the new Chief of the Criminal Investigation Division (CID) Sikatuna, negotiated for Carandang to come out. Carandang requested for the presence of his wife, Col. Doroteo Reyes and media man Ramon Tulfo. He went out of the house at around midnight when the three arrived. [17]

Milan testified that he was at home in Calavite St. at the time of the incident. He knew Carandang for seven months. Chua was their neighbor. While playing a card game inside his room, they heard someone pounding at the door. He stood and approached the door to check. The door was destroyed, and two unidentified men barged in. Gunshots erupted. He was hit on the left side of his body. He ran out of the room, leaving Chua and Carandang behind. As he was doing so, he saw his mother lying down and shouting "Itigil niyo ang putukan; maraming matatanda dito!" Milan was then hit on his left leg by another gunshot. [18]

Chua testified that he went to the house of Milan at around noontime of April 4, 2001 to play a card game. They played inside Milan's ground floor room. Five to ten minutes later, Carandang arrived and laid down on the bed. Chua did not pay much attention as Milan and Carandang discussed about cellular phones. Later, they heard a loud banging in the door as if it was being forced open. Milan stood up to see what was happening. Chua remained seated and Carandang was still on the bed. The door was forcibly opened. Chua heard successive gunshots and was hit on his left big toe. He ducked on the floor near the bed to avoid being hit further. He remained in that position for several hours until he lost consciousness. He was already being treated at the Chinese General Hospital when he regained consciousness. In said hospital, a paraffin test was conducted upon him. [19]

P/Sr. Insp. Grace Eustaquio, Forensic Chemist of the PNP Crime Laboratory, later testified that the paraffin test on Chua yielded a negative result for gunpowder nitrates, but that performed on Carandang produced a positive result. She was not able to conduct a paraffin test on Milan, who just came from the operating room when she saw him. Milan seemed to be in pain and refused to be examined. [20]

On April 22, 2003, the trial court rendered its Decision [21] finding Carandang, Milan and Chua guilty of two counts of murder and one count of frustrated murder:

WHEREFORE, finding the accused RESTITUTO CARANDANG, HENRY MILAN AND JACKMAN

CHUA guilty beyond reasonable doubt of the crime of murder described and penalized under Article 249 of the Revised Penal Code in relation to Article 63 of the same Code, for the killing of SPO2 Wilfredo Pilar Red and PO2 Dionisio Alonzo qualified by treachery and acting in conspiracy with each other, they are hereby sentenced to suffer the penalty of reclusion perpetua for each count of murder and to indemnify the heirs of the victims, jointly and severally, as follows:

To the heirs of SPO2 Wilfredo Red:

- P50,000.00 as civil indemnity;
- P50,000.00 as moral damages;
- P149,734.00 as actual damages; and
- P752,580.00 as compensatory damages

To the heirs of PO2 Dionisio Alonzo:

- P50,000.00 as civil indemnity;
- P50,000.00 as moral damages;
- P139,910.00 as actual damages; and
- P522,960.00 as compensatory damages.

Likewise, finding the accused Restituto Carandang, Henry Milan and Jackman Chua guilty beyond reasonable doubt of the crime of frustrated murder, described and penalized under Article 249 in relation to Article 6, paragraph 2, having acted in conspiracy with each other and applying the Indeterminate Sentence Law, they are hereby sentenced to suffer imprisonment of six (6) years of prision mayor to twelve (12) years and one (1) day of reclusion temporal, and to indemnify the victim Wilfredo Montecalvo as follows:

- P14,000.00 as actual damages;
- P20,000.00 as moral damages;
- P20,000.00 as reasonable attorney's fees; and
- To pay the costs. [22]

Carandang, Milan and Chua appealed to this Court. [23] The appeals were separately docketed as G.R. Nos. 160510-12. [24] Pursuant, however, to the decision of this Court in *People v. Mateo*, [25] the appeals were transferred [26] to the Court of Appeals, where they were assigned a single docket number, CA-G.R. CR.-H.C. No. 01934.

On May 10, 2006, the Court of Appeals rendered the assailed Decision modifying the Decision of the trial court:

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Quezon City, Branch 76, in Criminal Case Nos. Q-01-100061-63 finding accused-appellants guilty beyond reasonable doubt of two (2) counts of Murder and one (1) count of Frustrated Murder is hereby **AFFIRMED** with **MODIFICATIONS** as follows:

- 1) In Criminal Case Nos. Q-01-100061 and Q-01-100062, accused-appellants are hereby ordered to pay the heirs of PO2 Dionisio S. Alonzo and SPO2 Wilfredo P. Red an indemnity for loss of earning capacity in the amount of P2,140,980.69 and P2,269,243.62, respectively; and
- 2) In Criminal Case No. Q-01-100063, accused-appellants are hereby instead sentenced to suffer an indeterminate prison term of six (6) years and one (1) day of prision mayor, as minimum, to fourteen (14)

years, eight (8) months and one (1) day of reclusion temporal, as maximum.

With costs against the accused-appellants. [27]

Milan and Chua appealed to this Court anew. [28] Carandang did not appeal, and instead presented a letter informing this Court that he is no longer interested in pursuing an appeal. [29] On April 9, 2008, Milan and Chua filed a Supplemental Appellant's Brief to further discuss the Assignment of Errors they presented in their September 28, 2004 Appellant's Brief:

I.

The court a quo erred in holding that there was conspiracy among the appellants in the case at bar.

II.

Assuming arguendo that conspiracy exists, the court a quo gravely erred in convicting them of the crime of murder and frustrated murder instead of homicide and frustrated homicide only, the qualifying circumstance of treachery not having been duly proven to have attended the commission of the crimes charged. [30]

The trial court had ruled that Carandang, Milan and Chua acted in conspiracy in the commission of the crimes charged. Thus, despite the established fact that it was Carandang who fired the gun which hit SPO2 Red, PO2 Alonzo and SPO1 Montecalvo, all three accused were held equally criminally responsible therefor. The trial court explained that Carandang, Milan and Chua's actuations showed that they acted in concert against the police officers. The pertinent portion of the RTC Decision reads:

Milan, Carandang and Chua were all inside the room of Milan. Upon arrival of police officers Red, Alonzo and the others and having identified themselves as police officers, the door was closed and after Alonzo and Red pushed it open and as Alonzo shouted, "walang gagalaw," immediately shots rang out from inside the room, felling Alonzo, then Red, then Montecalvo. Chua was heard by Estores to shout to Milan: "Sugurin mo na" (tsn, October 16, 2001, page 8). And as Milan lunged at Montecalvo, the latter shot him.

That the three acted in concert can be gleaned from their actuations. First, when they learned of the presence of the police officers, they closed the door. Not one of them came out to talk peacefully with the police officers. Instead, Carandang opened fire, Alonzo and Red did not even have the chance to touch their firearms at that instant. [31]

In affirming this ruling, the Court of Appeals further expounded on the acts of Milan and Chua showing that they acted in concert with Carandang, to wit:

In the present case, when appellants were alerted of the presence of the police officers, Milan immediately closed the door. Thereafter, when the police officers were finally able to break open said door, Carandang peppered them with bullets. PO2 Alonzo and SPO2 Red died instantly as a result while SPO1 Montecalvo was mortally wounded. Then, upon seeing their victims helplessly lying on the floor and seriously wounded, Chua ordered Milan to attack the police officers. Following the order, Milan rushed towards Montecalvo but the latter, however, was able to shoot him.

At first glance, Milan's act of closing the door may seem a trivial contribution in the furtherance of the crime. On second look, however, that act actually facilitated the commission of the crime. The brief moment during which the police officers were trying to open the door paved the way for the appellants to take strategic positions which gave them a vantage point in staging their assault. Thus, when SPO2 Red and PO2 Alonzo were finally able to get inside, they were instantly killed by the sudden barrage of gunfire. In fact, because of the suddenness of the attack, said police officers were not able to return fire.

Insofar as Chua is concerned, his participation in the conspiracy consisted of lending encouragement and moral ascendancy to his co-conspirators as evidenced by the fact that he ordered Milan to attack the already fallen

police officers with the obvious intention to finish them off. Moreover, he did not immediately surrender even when he had the opportunity to do so but instead chose to stay with Carandang inside the room until their arrest. [32]

Milan and Chua object to the conclusion that they were in conspiracy with Carandang due to their acts of closing the door and not peaceably talking to the police officers. According to them, those acts were caused by their being frightened by the police officers who were allegedly in full battle gear. [33] Milan and Chua further assert that the fortuitous and unexpected character of the encounter and the rapid turn of events should have ruled out a finding of conspiracy. [34] They claim that the incident happened so fast, giving them no opportunity to stop Carandang. [35]

Appellants contest the factual finding that Chua directed Milan to go after SPO1 Montecalvo, alleging that they were both unarmed and that there was no way for Milan to attack an armed person. What really happened, according to them, was that Milan ran out of the room for safety and not to attack SPO1 Montecalvo. [36] Milan claims that he was already injured in the stomach when he ran out, and it was natural for him to seek safety.

Assuming *arguendo* that Chua uttered "Sugurin mo na!" to Milan, appellants argue that no crime was committed due to the same as all the victims had already been shot when said words were shouted. [37] Furthermore, it appears to have been uttered as a result of indiscretion or lack of reflection and did not inherently carry with it inducement or temptation. [38]

In the Supplemental Brief, Milan and Chua point out that the assault on the victims was the result of the impulsive act of Carandang and was not a result of any agreement or a concerted action of all the accused. [39] They claim that when the shootout ensued, Chua immediately dove down near the bed while Milan ran out of the room out of fear. [40] It is allegedly hard to imagine that SPO1 Montecalvo with certainty heard Chua utter the phrase "Sugurin mo na," considering that the incident happened so fast, there were lots of gunshots. [41]

To summarize, Milan's and Chua's arguments focus on the lack of direct evidence showing that they conspired with Carandang during the latter's act of shooting the three victims. However, as we have held in *People v. Sumalpong*, [42] conspiracy may also be proven by other means:

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Evidence need not establish the actual agreement among the conspirators showing a preconceived plan or motive for the commission of the crime. Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective, is sufficient. When conspiracy is established, the act of one is the act of all regardless of the degree of participation of each. [43]

In the case at bar, the conclusion that Milan and Chua conspired with Carandang was established by their acts (1) before Carandang shot the victims (Milan's closing the door when the police officers introduced themselves, allowing Carandang to wait in ambush), and (2) after the shooting (Chua's directive to Milan to attack SPO1 Montecalvo and Milan's following such instruction). Contrary to the suppositions of appellants, these facts are not meant to prove that Chua is a principal by inducement, or that Milan's act of attacking SPO1 Montecalvo was what made him a principal by direct participation. Instead, these facts are convincing circumstantial evidence of the unity of purpose in the minds of the three. As co-conspirators, all three are considered principals by direct participation.

Appellants' attempt to instill doubts in our minds that Chua shouted "sugurin mo na" to Milan, who then ran towards SPO1 Montecalvo, must fail. SPO1 Estores's positive testimony [44] on this matter prevails over the plain denials of Milan and Chua. SPO1 Estores has no reason to lie about the events he witnessed on April 5, 2001. As part of the team that was attacked on that day, it could even be expected that he is interested in having

only the real perpetrators punished.

Furthermore, we have time and again ruled that factual findings of the trial court, especially those affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record. [45] It was the trial court that was able to observe the demeanors of the witnesses, and is consequently in a better position to determine which of the witnesses are telling the truth. Thus, this Court, as a general rule, would not review the factual findings of the courts a quo, except in certain instances such as when: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to the findings of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. [46]

Neither can the rapid turn of events be considered to negate a finding of conspiracy. Unlike evident premeditation, there is no requirement for conspiracy to exist that there be a sufficient period of time to elapse to afford full opportunity for meditation and reflection. Instead, conspiracy arises on the very moment the plotters agree, expressly or impliedly, to commit the subject felony. [47]

As held by the trial court and the Court of Appeals, Milan's act of closing the door facilitated the commission of the crime, allowing Carandang to wait in ambush. The sudden gunshots when the police officers pushed the door open illustrate the intention of appellants and Carandang to prevent any chance for the police officers to defend themselves. Treachery is thus present in the case at bar, as what is decisive for this qualifying circumstance is that the execution of the attack made it impossible for the victims to defend themselves or to retaliate. [48]

The trial court correctly sentenced appellants to suffer the penalty of reclusion perpetua in Criminal Case Nos. Q-01-100061 and Q-01-100062. The penalty for murder under Article 248 [49] of the Revised Penal Code is reclusion perpetua to death. Applying Article 63 [50] of the same Code, since there was no other modifying circumstance other than the qualifying circumstance of treachery, the penalty that should be imposed is reclusion perpetua.

In Criminal Case No. Q-01-100063, the Court of Appeals correctly modified the penalty for the frustrated murder of SPO1 Montecalvo. Under Article 50 [51] in connection with Article 61, paragraph 2 [52] of the Revised Penal Code, the penalty for frustrated murder is one degree lower than reclusion perpetua to death, which is reclusion temporal. Reclusion temporal has a range of 12 years and 1 day to 20 years. Its medium period, which should be applied in this case considering that there is no modifying circumstance other than the qualifying circumstance of treachery, is 14 years, 8 months and 1 day to 17 years and 4 months - the range of the maximum term of the indeterminate penalty under Section 1 [53] of the Indeterminate Sentence Law. The minimum term of the indeterminate penalty should then be within the range of the penalty next lower to reclusion temporal, and thus may be any term within prision mayor, the range of which is 6 years and 1 day to 12 years. The modified term of 6 years and 1 day of prision mayor as minimum, to 14 years, 8 months and 1 day of reclusion temporal as maximum, is within these ranges.

The civil liabilities of appellants should, however, be modified in accordance with current jurisprudence. Thus, in Criminal Case Nos. Q-01-100061 and Q-01-100062, the award of P50,000.00 as civil indemnity for each victim must be increased to P75,000.00. [54] In cases of murder and homicide, civil indemnity of P75,000.00 and moral

damages of P50,000.00 are awarded automatically, without need of allegation and proof other than the death of the victim. [55] Appellants are furthermore solidarily liable to each victim for P30,000.00 as exemplary damages, which is awarded when the crime was committed with an aggravating circumstance, be it generic or qualifying. [56] However, since Carandang did not appeal, he is only solidarily liable with Milan and Chua with respect to the amounts awarded by the Court of Appeals, since the Court of Appeals' Decision has become final and executory with respect to him. The additional amounts (P25,000.00 as civil indemnity and P30,000.00 as exemplary damages) shall be borne only by Milan and Chua, who are hereby held liable therefor solidarily.

In Criminal Case No. Q-01-100063, the solidary liability of Milan and Chua for moral damages to SPO1 Wilfredo Montecalvo is likewise increased to P40,000.00, in accordance with prevailing jurisprudence. [57] An award of P20,000.00 as exemplary damages is also warranted. [58] The additional amounts (P20,000.00 as moral damages and P20,000.00 as exemplary damages) are likewise to be solidarily borne only by Milan and Chua.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01934 dated May 10, 2006 is hereby AFFIRMED, with the following MODIFICATIONS:

- In Criminal Case Nos. Q-01-100061 and Q-01-100062, appellants Henry Milan and Jackman Chua are held solidarily liable for the amount of P25,000.00 as civil indemnity and P30,000.00 as exemplary damages to the heirs of each of the victims, PO2 Dionisio S. Alonzo and SPO2 Wilfredo P. Red, in addition to the amounts to which they are solidarily liable with Restituto Carandang as held in CA-G.R. CR.-H.C. No. 01934. Thus, to summarize the rulings of the lower courts and this Court:

- The heirs of SPO2 Wilfredo Red are entitled to the following amounts:

- P75,000.00 as civil indemnity, P50,000.00 of which shall be solidarily borne by Carandang, Milan and Chua, while P25,000.00 shall be the solidary liability of Milan and Chua only;

- P50,000.00 as moral damages to be solidarily borne by Carandang, Milan and Chua;

- P149,734.00 as actual damages to be solidarily borne by Carandang, Milan and Chua;

- P2,140,980.00 as indemnity for loss of earning capacity to be solidarily borne by Carandang, Milan and Chua; and

- P30,000.00 as exemplary damages to be solidarily borne by Milan and Chua only;

- The heirs of PO2 Dionisio Alonzo are entitled to the following amounts:

- P75,000.00 as civil indemnity, P50,000.00 of which shall be solidarily borne by Carandang, Milan and Chua, while P25,000.00 shall be the solidary liability of Milan and Chua only;

- P50,000.00 as moral damages to be solidarily borne by Carandang, Milan and Chua;

- P139,910.00 as actual damages to be solidarily borne by Carandang, Milan and Chua;

- P2,269,243.62 as indemnity for loss of earning capacity to be solidarily borne by Carandang, Milan and Chua;

- P30,000.00 as exemplary damages to be solidarily borne by Milan and Chua only;

- In Criminal Case No. Q-01-100063, appellants Henry Milan and Jackman Chua are held solidarily liable for the amount of P20,000.00 as moral damages and P20,000.00 as exemplary damages to SPO1 Wilfredo Montecalvo, in addition to the amounts to which they are solidarily liable with Restituto Carandang as held in CA-G.R. CR.-H.C. No. 01934. Thus, to summarize the rulings of the lower courts and this Court, SPO1 Wilfredo Montecalvo is entitled to the following amounts:

- P14,000.00 as actual damages to be solidarily borne by Carandang, Milan and Chua;
- P40,000.00 as moral damages, P20,000.00 of which shall be solidarily borne by Carandang, Milan and Chua, while P20,000.00 shall be the solidary liability of Milan and Chua only;
- P20,000.00 as exemplary damages to be solidarily borne by Milan and Chua only; and
- P20,000.00 as reasonable attorney's fees, to be solidarily borne by Carandang, Milan and Chua.
- Appellants are further ordered to pay interest on all damages awarded at the legal rate of Six Percent (6%) per annum from date of finality of this judgment.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Mendoza,[*] JJ., concur.

[*] Per Raffle dated June 27, 2011.

[1] Rollo, pp. 3-22; penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring.

[2] Records, p. 2.

[3] Id. at 6.

[4] Id. at 10.

[5] TSN, August 8, 2001, pp. 6-13.

[6] TSN, November 12, 2001, p. 5.

[7] TSN, August 8, 2001, pp. 14-18.

[8] TSN, October 16, 2001, pp. 5-9.

[9] TSN, September 10, 2001, pp. 5-7.

[10] TSN, September 17, 2001, pp. 6-7.

[11] Id. at 10-14.

[12] TSN, September 10, 2001, p. 7.

[13] TSN, September 17, 2001, pp. 15-16.

[14] Records, pp. 91-92.

[15] TSN, August 15, 2001, pp. 7-19.

[16] TSN, December 10, 2001, pp. 4-11.

[17] Id. at 7-9.

[18] TSN, April 1, 2002, pp. 3-9.

[19] TSN, April 22, 2002, pp. 4-15.

[20] TSN, September 9, 2002, pp. 3-13.

- [21] Records, pp. 272-294.
- [22] Id. at 293-294.
- [23] CA rollo, pp. 58-59.
- [24] Id. at 64.
- [25] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [26] CA rollo, pp. 239-240.
- [27] Rollo, p. 21.
- [28] Id. at 23-24.
- [29] Id. at 29.
- [30] CA rollo, pp. 135-136.
- [31] Records, p. 287.
- [32] Rollo, p. 17.
- [33] CA rollo, p. 138.
- [34] Id. at 139-141.
- [35] Id. at 142-143.
- [36] Id. at 143-146.
- [37] Id. at 146-151.
- [38] Id. at 151.
- [39] Rollo, p. 54.
- [40] Id. at 53.
- [41] Id. at 54.
- [42] 348 Phil. 501 (1998).
- [43] Id. at 524-525.
- [44] TSN, October 16, 2001, pp. 6-8.
- [45] People v. Barde, G.R. No. 183094, September 22, 2010.
- [46] Pelonia v. People, G.R. No. 168997, April 13, 2007, 521 SCRA 207, 219.
- [47] People v. Baldimo and Derilo, 338 Phil. 350, 375 (1997).
- [48] People v. Garin, 476 Phil. 455, 476 (2004).
- [49] Art. 248. Murder. -- Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or any other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[50] Art. 63. Rules for the application of indivisible penalties. -- In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

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

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

[51] Art. 50. Penalty to be imposed upon principals of a frustrated crime. -- The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principals in a frustrated felony.

[52] Art. 61. Rules of graduating penalties. -- For the purpose of graduating the penalties which, according to the provisions of Articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

x x x x

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

[53] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the

offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

[54] *People v. Orias and Elarcosa*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 437.

[55] *Id.*

[56] *People v. Regalario*, G.R. No. 174483, March 31, 2009, 582 SCRA 738, 761.

[57] *People v. Mokammad*, G.R. No. 180594, August 19, 2009, 596 SCRA 497, 513-514.

[58] *Id.*

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