

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE JADAP, ACCUSED-APPELLANT.

G.R. No. 177983. March 30, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

For automatic review is the Decision[1] of the Court of Appeals, Mindanao Station in CA-G.R. CR-HC No. 00244 Min which affirmed with modification, an earlier Decision[2] of the Regional Trial Court (RTC) of Misamis Oriental, Cagayan de Oro City, Branch 18 in Criminal Case No. 2001-649, finding accused-appellant Dante Jadap guilty of murder under Article 248 of the Revised Penal Code in relation to Republic Act No. 7659.

On July 3, 2001, an Information[3] was filed against Jadap charging him with the crime of murder as follows:

That on or about February 20, 2001 at 9:30 o'clock in the evening more or less at Raagas Beach, Bonbon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with .38 caliber revolver which he was then conveniently provided, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and shot one Robert Alisbo y Roxas, represented by his father Rodrigo Alisbo y Topic, hitting the right side of his body, thereby inflicting fatal or mortal wounds of the latter which is the direct and immediate cause of his death.

Contrary to and in Violation of Article 248 of the Revised Penal Code in relation to R.A. 7659.

When arraigned on April 1, 2002, Jadap pleaded not guilty.[4] At the pre-trial conference, the parties admitted the following facts:

1. That Robert Alisbo y Roxas died of gunshot wound on the spinal column on May 25, 2001 as shown in the death certificate marked as Exhibit "A";

2. That there was no quarrel between the victim and accused Dante Jadap immediately before and during the incident of February 20, 2001 at 9:30 o'clock in the evening at Raagas Beach, Bonbon, Cagayan de Oro City.

x x x. Exhibit "D" certification from the firearms/explosives security agencies and guards section to prove that the accused is not a licensed firearm holder of any caliber of firearm x x x.[5]

At the trial, the prosecution presented the following witnesses: (a) Rollie Arciso (Arciso), the victim's friend; (b) Police Superintendent Gregorio R. Bautista of the Firearms and Explosives/Security Agencies and Gurads Section, Philippine National Police, Regional Office 10, Cagayan de Oro City; (c) Dr. Ryan R. Mortiz, the victim's attending physician; (d) Diosdado Aton, Jr. (Aton), an eyewitness to the shooting incident; and (e) Rodrigo Alisbo, the victim's father.

For the defense, Jadap himself and his friend, Marito Ramayan, took the witness stand.

On January 21, 2003, the trial court rendered a decision finding Jadap guilty of murder qualified by treachery with

the aggravating circumstance of the use of unlicensed firearm. The dispositive portion of its decision reads:

WHEREFORE, after taking into account of all the foregoing, the Court finds accused DANTE JADAP GUILTY beyond reasonable doubt [of] the crime of murder, punishable under Article 248 of the Revised Penal Code in relation to R.A. 7659. After taking into account the aggravating circumstance of the use of unlicensed firearm without any mitigating circumstance, the said accused is hereby sentenced and SO ORDERED to suffer the supreme penalty of DEATH by lethal injection, including its accessory penalties. He is further directed and SO ORDERED to pay the parents of the victim the sum of Seventy-Five Thousand (P75,000.00) Pesos, as indemnity for the death of the victim; Fifty Thousand (P50,000.00) Pesos, as moral damages; One Hundred One Thousand Eight Hundred (P101,800.00) Pesos, as refund for the medical and burial expenses; and the sum of P720,000.00, as loss of earning.

Pursuant to Section 22 of R.A. 7659 and Section 10 of Rule 122 of the Rules of Court, let the entire record of this case be forwarded to the Supreme Court for automatic review.[6]

The record of this case was forwarded to this Court for automatic review in view of the penalty imposed.

In our Resolution[7] dated January 13, 2004, we accepted the appeal and directed the Chief of the Judicial Records Office to send notices to the parties to file their respective briefs. The Court also required the Director, Bureau of Corrections, to confirm the detention of Jadap at the National Penitentiary.

Jadap filed his Appellant's Brief[8] on June 11, 2004, while the People, through the Office of the Solicitor General, filed its Appellee's Brief[9] on October 8, 2004.

Pursuant to our pronouncement in *People v. Mateo*,[10] which modified the provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed by the trial court is death, reclusion perpetua or life imprisonment, this case was referred for appropriate action and disposition to the Court of Appeals where it was docketed as CA-G.R. CR-HC No. 00244 Min.

The evidence for the prosecution is summarized by the Office of the Solicitor General, as follows:

At 8:00 o'clock in the evening of February 20, 2001 Robert Alisbo, the victim, with his friends Rollie Arciso, Jeffrey Arciso, Gomer Tormes, Junifel Pilaro, Diosdado Aton, Jr., Ferlin Alberca, and Lenderico Sabanal went swimming at Raagas Beach Resort, Bonbon, Cagayan de Oro City. Around 9:00 o'clock in the evening, they were in an open cottage in the beach resort drinking a gallon of tuba with Robert Alisbo and Rollie Arciso sitting near each other on a bench. They could well see one another because the place was lighted by a fluorescent light which was approximately 2.5 meters away from them. Around 9:30 p.m., [accused-appellant] Dante Jadap suddenly appeared from nowhere behind Robert Alisbo and Rollie Arciso. Without provocation from the latter's group, [accused-appellant] took out a .38 caliber revolver and shot Roberto Alisbo, hitting him on the right side of his body (TSN, June 3, 2002, pp. 6-9, 13).

Then, [accused-appellant] pointed the gun at the friends of Robert Alisbo and fired it twice, causing them to immediately scamper away. However, Rollie Arciso, Lenderico Sabanal, and Ferlin Alberca stayed, taking cover under the cottage's table. [Accused-appellant] hit Ferlin Alberca and Lenderico Sabanal who was injured on his left leg. Thereafter, accused-appellant casually walked away towards Bayabas, a nearby barangay (ibid., p. 10).

Seeing Robert Alisbo prostrate on the ground, Rollie Arciso immediately went to the house nearby of Barangay Kagawad Raagas to seek assistance. Accordingly, Raagas called the police and using the police car brought Robert Alisbo and Lenderico Sabanal to the hospital (ibid., p. 11).

Four days later, on February 24, 2001, Dr. Ryan R. Mortiz operated on the victim but to no avail. Although Roberto Alisbo was discharged from the hospital on March 10, 2001, the lower portion of his body remained

incapacitated. He died thereafter. According to Dr. Mortiz, the bullet entered the victim's chest area through the right side of the body, about 6" below the nipple. There was no exit wound, and the slug was found on the spinal cord, damaging the right lung, chest cavity and spinal cord which caused the victim's death (TSN, June 13, 2002, pp. 6-8).

Meanwhile, on the fatal night of February 20, 2001, the police investigated the crime scene and interrogated Rollie Arciso about the incident. The police was able to recover from the crime scene two slugs of a .38 caliber pistol. Thereafter, the police, accompanied by Rollie Arciso, went to Mahayahay and Bayabas, the adjoining barangays of Bonbon to look for [accused-appellant] but they did not find him. The following morning, Rollie Arciso had the incident entered in the police blotter of Carmen Police Station.

Sometime in December 2001, [accused-appellant] was finally found and arrested by the police (TSN, December 10, 2002, p. 30).

Police Supt. Gregorio R. Bautista of the Firearm and Explosive Division of the Philippine National Police, Region X, Cagayan de Oro City, affirmed that [accused-appellant] was not a licensed firearm holder (TSN, June 5, 2002, p. 45).

The father of the deceased, Rodrigo Alisbo, incurred hospital, medical, and burial expenses for the victim in the total amount of P101,800.00 (Exhibit "C" and "C-1"). At the time of his death, Robert Alisbo was only 20 years old and was working as a mason with a monthly income of P3,000.00 (TSN, June 24, 2002, pp. 2-8).[11]

On the other hand, Jadap's Brief presents a different story:

MARITO RAMAYAN averred that he lives within a hundred meters from the site of the shooting although he was asleep on the night that the incident happened. In the morning of the next day, when he learned of the alleged shooting incident, he went to check out the site and saw that several tuba gallons strewn all over the place. He had not seen the [accused-appellant] at that place for a long time prior to the incident. (October 22, 2002, pp. 26-33; December 10, 2002, pp. 22-25).

Accused DANTE JADAP was a former police officer who was discharged from the service due to absence without leave. After his resignation, he stayed at Bayabas, Cagayan de Oro which is about a kilometer away from Bonbon, Cagayan de Oro, with his children as he was separated de facto from his wife. But when he returned to Cagayan de Oro from Manila, where he was following up his reinstatement, he left his two (2) children under the care of his wife. He only goes to the area of Bonbon, Cagayan de Oro whenever his wife calls him to fetch their children. His wife was studying. On the night of February 20, 2001, he was at home attending to his two children. He never knew that he was charged of murder until the time his wife turned him over to the police due to a misunderstanding. (TSN, December 10, 2002, pp. 26-40).[12]

On August 17, 2006, the Court of Appeals promulgated the herein challenged decision affirming for the most part the decision of the trial court with modification only as to the penalty imposed. The penalty was lowered from death to reclusion perpetua and the award of civil indemnity in the amount of P75,000.00 was reduced to P50,000.00. Also, additional awards of P50,000.00 each as exemplary damages and temperate damages were imposed. However, the Court of Appeals deleted the award of P101,800.00 as a refund of the medical and burial expenses for lack of evidence. The amount of P50,000.00 for moral damages and P720,000.00 for loss of earning capacity were affirmed. Pertinently, the Court of Appeals decision reads in part:

WHEREFORE, the decision appealed from is affirmed but the penalty is reduced to reclusion perpetua. Further, the amount of damages are modified in that appellant is ordered to pay the parents of Robert Alisbo (a) Php50,000.00 as civil indemnity ex delicto; (b) Php720,000.00 for loss of earning capacity; (c) Php50,000.00 for temperate damages; (d) Php50,000.00 for moral damages; and (e) Php50,000.00 as exemplary damages.[13]

Thereafter, the Court of Appeals elevated the instant case to this Court in view of the penalty imposed. In our Resolution[14] dated August 1, 2007, we required the parties to simultaneously submit their respective supplemental briefs. On October 5, 2007, the People filed a Manifestation[15] stating that it is no longer filing a supplemental brief since the arguments raised by Jadap have already been discussed in its brief dated October 8, 2004. Jadap likewise filed his Manifestation[16] on October 17, 2007 adopting his Appellant's Brief and Reply as Supplemental Brief.

Jadap raised this lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The present appeal has no merit.

The pivotal issue being factual and evidentiary, the credibility of the witnesses assumes immense importance. Well-settled is the rule that the trial court's evaluation of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal considering that the trial court was in a better position to decide thereon, having personally heard the witnesses and observed their deportment and manner of testifying during the trial. Its findings on the credibility of witnesses and the facts must be given great weight on appeal, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.[17]

We find no reason to deviate from the trial court's assessment, as affirmed by the Court of Appeals, of the witnesses' testimonies, to wit:

In the case at bar, although the crime occurred at past 9:30 in the evening, there was fluorescent light coming from the electric posts. No less than defense witness in the person of Marito Ramayan declared that the place of the incident was well-lighted because he used to pass by in evening when he goes fishing and peddling.

Moreover, prosecution's eyewitnesses namely: Rollie Arciso and Diosdado Aton, also declared that there was fluorescent light. It would be against human nature if they would concoct heinous charges against accused, otherwise, their intention of seeking justice would serve no purpose. Much more, their candidness, poises, bearings, manners and demeanors impressed the Court.

The accused also anchored his defense of denial and alibi. He claimed that at the time of the incident he was at his house attending to his two minor children. Again, the denial and alibi cannot stand taller than the positive identification of the two eyewitnesses.[18]

After a thorough review and examination of the record, we find that the evidence in this case sufficiently established the guilt of Jadap beyond reasonable doubt. Eyewitnesses Arciso and Aton positively identified Jadap as the assailant. Their testimonies were straightforward, clear and consistent and they could not be mistaken in pinpointing Jadap as the person who gunned down Robert Alisbo, because the place where the incident happened was illuminated by a fluorescent light. It is equally worth noting that Jadap did not rebut the testimonies of both Arciso and Aton that they knew him.

On direct examination by Prosecutor Manuel Nolasco, Arciso testified:

Q

So, you knew the late Robert Alisbo?

A

Yes, sir.

Q

Why do you know him?

A

Because we were close friends, and besides, we were neighbors.

Q

Is this Robert Alisbo the same person who is the victim in this case?

A

Yes, sir.

Q

Do you also know the accused, Dante Jadap?

A

Yes, sir.

Q

Before February 20, 2001, did you already know Dante Jadap?

A

Yes, sir.

COURT (to the witness)

Why do you know the accused?

A

Because I usually go swimming at Raagas Beach, and I always see him there.

x x x x

Q

On February 20, 2001, at about 9:00 o'clock in the evening, do you remember where were you?

A

Yes, sir.

Q

Please tell us where were you?

A

I was at Raagas Beach.

x x x x

Q

What were you doing then while you were sitting on the bench?

A

We had a conversation while we were drinking.

Q

By the way, who were with you when you sat on the bench, and name them?

A

Only Robert Alisbo and I sat on the bench because our other companions sat on the sand.

Q

You said that you and the victim, Robert Alisbo, were sitting on the bench, how far was Robert Alisbo from you?

A

We were sitting side by side.

Q

While you were sitting side by side with the victim, Robert Alisbo, and your other companions sat on the sand, what happened?

A

I saw a person coming from behind and then when he was already at our side, he suddenly drew his gun.

Q

After that person drew his gun, what did he do?

A

He shot Robert Alisbo.

Q

Did you recognize who was that man who drew his gun and shot Robert Alisbo?

A

Yes, sir.

Q

Who was that person?

A

It was Dante Jadap.

x x x x

Q

Do you know if Robert Alisbo was hit when he was shot by the accused?

A

Yes, sir.

Q

After Robert Alisbo was shot, what happened to him?

A

He fell down from the bench.

Q

How about you, what did you do?

A

I hid myself under the table.

Q

How about your other companion who were sitting on the sand, what did they do?

A

After shooting Robert Alisbo, Dante Jadap pointed his gun to my other friends who were sitting on the sand, and he was able to fire two (2) times, and then my friends scampered away.

Q

Was there anybody who was hit when your companions were pointed with the gun?

A

Yes, sir.

Q

Who was hit?

A

Lenderico Sabanal and Ferlin Alberca.

Q

Which part of the body of Robert Alisbo was hit?

A

He was hit on the right side of the body.

Q

After the accused shot Lenderico Sabanal and Ferlin alberca, you said that your other companions scampered, how about the accused, what did he do?

A

He walked from Raagas going towards Bayabas.[19]

On clarificatory questions by the Court:

Q

How come that the victim was hit on the right side when you told the Court that the accused was at your back?

A

Because the accused passed on our side and then shot Robert Alisbo using his left hand when he was already at my side.

Q

That was 9:30 in the evening, correct?

A

Yes, sir.

Q

How were you able to recognize the accused when it was in the evening?

A

He was illuminated by a light, and we were under the light.

Q

How far was the light from where you were at that time? Did you not say that the light was at the post?

A

Yes, sir, the light was one (1) meter away.

Q

How far is the light above you?

A

About five (5) to six (6) meters.

Q

What kind of light was it?

A

Fluorescent light.[20]

For his part, Aton testified during direct examination that:

Q

Mr. Diosdado Aton, Jr., you said that you are a resident of Cabina, Bonbon, Cagayan de Oro City, how long have you been a resident there?

A

Since 1980, sir.

x x x x

Q

Do you know of a certain Robert Alisbo y Roxas, the victim in this case?

A

Yes, sir.

Q

Before February 20, 2001 have you known already this Robert Alisbo y Roxas?

A

Yes, sir.

Q

For how long have you known him?

A

Twelve years, sir.

Q

Do you know also a certain Dante Jadap?

A

Yes, sir.

x x x x

Q

How long have you known Dante Jadap before February 20, 2001?

A

When I was a student at Bonbon, Cagayan de Oro City, sir.

Q

On February 20, 2001 at about 9:30 o'clock in the evening do you remember where were you?

x x x x

A

I was at Raagas Beach, Bonbon, Cagayan de Oro City, taking a bath.

x x x x

Q

While you were drinking tuba together with your companions whom you have named a while ago what happened?

A

While we were drinking we saw Dante Jadap, and suddenly, he approached us.

x x x x

Q

When that Dante Jadap approached your group what happened?

A

We saw that he drew a gun a .38 caliber and then shot Robert "Dodong" Alisbo y Roxas.

x x x x

Q

How were you able to recognize the accused that it was 9:00 o'clock in the evening?

A

Because the place was well-lighted and there were several electric fluorescents in that place where we were.[21]

The truthfulness of the above testimonies was also bolstered by the physical evidence consisting of the injuries found in the body of the victim from which a .38 caliber bullet was retrieved, and the two .38 caliber slugs recovered by the police at the crime site. That the physical evidence corroborated the prosecution witnesses' testimonies can be gleaned from the trial court's ruling that:

No dispute that the victim died of a gunshot wound on May 25, 2001, as admitted in the pre-trial (p. 79, Record), after he was shot on February 20, 2001 and was operated by Dr. Ryan R. Mortiz on February 24, 2001. To his opinion it was considered a fatal wound (TSN, June 13, 2002, pp. 6-8) because the bullet entered the chest area through [the] right side of the body, about 6" below the nipple with no exit wound, the slug was found on and damaged the spi[n]al cord, including the right lung and chest cavity.[22] (Emphases ours.)

As for Jadap's defense of denial and alibi, we cannot sustain the same in light of the eyewitnesses' positive identification of Jadap and their clear and convincing testimonies regarding Jadap's shooting of the victim. For the defense of alibi to prosper, it must be established by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that the accused was somewhere else. Physical impossibility refers to the distance between the place where the accused was when the crime happened and the place where it was committed, as well as the facility of the access between the two places.[23] In the case at bar, Jadap failed to prove the element of physical impossibility for him

to be at the scene of the crime at the time it took place. He himself admitted that it would only take him about ten minutes to walk from his house in Bayabas to his wife's house at Raagas Beach, Bonbon, Cagayan de Oro City, where the crime was committed.

Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides:

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. (Emphasis supplied.)

We agree with both the trial court and the Court of Appeals that treachery, which was alleged in the Information, qualified the killing of Robert Alisbo.

Treachery exists when an offender commits any of the crimes against persons, employing means, methods or forms which tend directly or especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make. This definition sets out what must be shown by evidence to conclude that treachery existed, namely: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution. To reiterate, the essence of qualifying circumstance is the suddenness, surprise and the lack of expectation that the attack will take place, thus, depriving the victim of any real opportunity for self-defense while ensuring the commission of the crime without risk to the aggressor.[24]

The evidence in this case shows that the attack was unexpected and swift. The victim and his friends were drinking on the beach when Jadap suddenly appeared from behind, walked towards their right side, and without any warning pulled out a gun and fired at the victim. This shot was followed by more shots directed at the victim's friends, Ferlyn Alberca who was hit on both thighs and Lenderico Sabanal on his leg. The victim had no opportunity to defend himself and Jadap was not exposed to any danger in view of the unexpected attack. Also, Jadap deliberately and consciously adopted his mode of attack by using a .38 caliber revolver and made sure that the victim, who was unarmed, would have no chance to defend himself.

We proceed to a review of the penalties imposed on Jadap.

Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, murder is punishable by reclusion perpetua to death. In view of the attendant circumstance of treachery, the crime committed by Jadap is murder. Records also show that Jadap was not a licensed firearm holder.[25] Pursuant to Section 1 of Republic Act No. 8294, when an unlicensed firearm is used in the commission of the crime, it should be considered as an aggravating circumstance. Hence, the penalty imposed should be the maximum penalty, which is death.

However, in view of the effectivity of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," on June 24, 2006, the penalty imposed must be reduced from death to reclusion perpetua without eligibility for parole.

As to damages, when death occurs due to a crime, the following 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.[26]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. In cases of murder and homicide, moral damages may be awarded without need of

allegation and proof of the emotional suffering of the heirs, other than the death of the victim, since the emotional wounds from the vicious killing of the victim cannot be denied.[27] To conform with recent jurisprudence, Jadap is ordered to pay P75,000.00 as civil indemnity and another amount of P75,000.00 as moral damages.[28]

Article 2230 of the Civil Code states that exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances, as in this case. Thus, the heirs of the victim are entitled to exemplary damages in the amount of P30,000.00 pursuant to the latest jurisprudence on this matter.[29]

As to actual damages, the rule is that "only receipted expenses can be the basis of actual damages arising from [medical] funeral expenditures." [30] All the prosecution presented was a receipt from the funeral parlor amounting to P2,500.00.[31] Since the receipted expenses of the victim's family was less than P25,000.00, temperate damages in the said amount can be awarded in lieu of actual damages.[32] Accordingly, the heirs of the victim are not entitled to actual damages but to temperate damages in the amount of P25,000.00.

Both the trial court and the Court of Appeals awarded the heirs of Robert Alisbo the amount of P720,000.00 by reason of the victim's loss of earning capacity. As a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[33] In this case, no documentary evidence was presented to prove the claim of the victim's heirs for damages by reason of loss of earning capacity. However, the victim's father testified that at the time of his son's death, he was only 20 years old and was working as a mason with a monthly income of P3,000.00. We find the father's testimony sufficient to justify the award of damages for loss of earning capacity.

The computation arrived at by the trial court, as affirmed by the Court of Appeals, was in accordance with the formula for computing the award for loss of earning capacity.[34] Thus:

Award for

lost earnings = $\frac{2}{3}$ [80-age at time of death] x [gross annual income - 50% (GAI)]

= $\frac{2}{3}$ [80-20] x P36,000.00 - P18,000.00

= (40) x (P18,000.00)

= P720,000.00

In addition to the damages awarded, we also impose on all the amounts of damages an interest at the legal rate of 6% from this date until fully paid.[35]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR- HC No. 00244 MIN promulgated on August 17, 2006, affirming with modification the Decision dated January 21, 2003 of the Regional Trial Court of Cagayan de Oro City, Branch 18 in Criminal Case No. 2001-649 is AFFIRMED with MODIFICATION. Accused-appellant Dante Jadap is found GUILTY beyond reasonable doubt of MURDER as defined in Article 248 of the Revised Penal Code, qualified by treachery and with the attendant aggravating circumstance of the use of unlicensed firearm, with no mitigating circumstance. Pursuant to Republic Act No. 9346, banning the imposition of the death penalty, he is sentenced to suffer the penalty of Reclusion Perpetua without possibility of parole. Jadap is further ORDERED to pay the heirs of Robert Alisbo the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P30,000.00 as exemplary damages, P25,000.00 as temperate damages,

P720,000.00 as loss of earning capacity and an interest on all the damages awarded at the legal rate of 6% from this date until fully paid.

SO ORDERED.

Carpio Morales,[*] (Acting Chairperson), Peralta,**] Bersamin, and Abad,[***] JJ., concur.

[*] Per Special Order No. 828 dated March 16, 2010.

[**] Additional member per Special Order No. 825 dated March 3, 2010.

[***] Additional member per Special Order No. 829 dated March 16, 2010.

[1] Penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr., concurring; rollo, pp. 4-19.

[2] Penned by Presiding Judge Edgardo T. Lloren; CA rollo, pp. 20-30.

[3] Records, p. 2.

[4] Id. at 47.

[5] Id. at 79.

[6] CA rollo, pp. 29-30.

[7] Id. at 34.

[8] Id. at 52-64.

[9] Id. at 81-95.

[10] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[11] CA rollo, pp. 85-87.

[12] Id. at 56-57.

[13] Rollo, p. 18.

[14] Id. at 23.

[15] Id. at 24-26.

[16] Id. at 27-29.

[17] *People v. Caritativo*, 451 Phil. 741, 757 (2003).

[18] CA rollo, pp. 26-27.

[19] TSN, June 3, 2002, pp. 5-10.

[20] Id. at 14-15.

[21] TSN, June 13, 2002, pp. 15-19.

[22] CA rollo, p. 26.

[23] *People v. Appegu*, 429 Phil. 467, 481 (2002).

[24] *People v. Casta*, G.R. No. 172871, September 16, 2008, 565 SCRA 341, 356-357.

[25] Records, p. 210.

[26] *People v. Anod*, G.R. No. 186420, August 25, 2009.

[27] *Herrera v. Sandiganbayan*, G.R. Nos. 119660-61, February 13, 2009, 579 SCRA 32, 67.

[28] *People v. Malibiran*, G.R. No. 178301, April 24, 2009 citing *People v. Regalario*, G.R. No. 174483, March 31, 2009, 582 SCRA 738, 762.

[29] *Id.*

[30] *People v. Obligado*, G.R. No. 171735, April 16, 2009, 585 SCRA 380, 386.

[31] Records, p. 209.

[32] *People v. Obligado*, *supra* note 30 at 386.

[33] *People v. Garchitorena*, G.R. No. 175605, August 28, 2009.

[34] *Id.*

[35] *Mendoza v. People*, G.R. No. 173551, October 4, 2007, 534 SCRA 668, 702.

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