

JOSEPH A. GANDOL, PLAINTIFF-APPELLEE, VS. PEOPLE OF THE PHILIPPINES, ACCUSED-APPELLANT.

G.R. No. 178233. December 04, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

These consolidated petitions for review on certiorari under Rule 45 of the Rules of Court assail the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00059 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Legazpi City, finding Joseph A. Gandol (Joseph) and Eduardo A. Gandol (Eduardo) guilty of the crime of Murder.

In an Amended Information dated 10 September 1997, Joseph, Eduardo and Nestor Ocaña (Nestor) were charged before the RTC with the crime of Murder defined under Article 248 of the Revised Penal Code, as amended. The accusatory portion of the Information reads:

That on or about the 1[st] day of June, 1997, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another for a common purpose, with intent to kill, did then and there willfully, unlawfully and feloniously, and with treachery and taking advantage of superior strength, attack, assault and stab with a knife one RICARDO ASEJO, JR., thereby inflicting upon the latter injuries which directly caused the death of the said RICARDO ASEJO, JR.[3]

During the arraignment on 8 December 1997, Joseph, Eduardo and Nestor, with the assistance of counsel de oficio, pleaded not guilty.[4] Thereafter, trial on the merits ensued.

On 17 August 1998, after the prosecution presented four witnesses, the Assistant City Prosecutor of Legazpi City filed a motion for the discharge of Nestor as accused to utilize him as a state witness. Without the opposition of the counsel from the remaining accused, the RTC granted said motion on the same date.[5]

The prosecution presented five witnesses, namely: (1) Senior Police Officer (SPO) 1 Salvador Batas, Jr. (SPO1 Batas), the responding police officer to whom Joseph admitted that he committed the crime; (2) Dr. Modesto T. Kapuno (Dr. Kapuno), the City Health Officer of Legazpi City, who conducted the autopsy on the victim; (3) Rosita Asejo, mother of the deceased who testified on the actual damages incurred by the family; (4) SPO1 Virgilio Broncano, the Desk Officer of the Legazpi City Philippine National Police, who recorded in the police blotter the killing of Ricardo Asejo, Jr. (Ricardo); and (5) Nestor, who allegedly saw the actual killing of Ricardo.

As documentary evidence, the prosecution offered the following: (1) Exhibit "A" - Medico-Legal Examination Report issued by Dr. Kapuno; (2) Exhibit "B" - a receipt issued by the funeral parlor Nuestra Señora de Salvacion for the funeral services amounting to P5,200.00 and other internment expenses written on a piece of paper in the amount of P20,035.00; (3) Exhibit "C" - Police Blotter of the incident; (4) Exhibit "D" - the knife allegedly used in the killing of Ricardo; (5) Exhibit "E" - the Joint Sworn Affidavit of SPO1 Batas and a certain SPO3 Brigones.

Taken together, the evidence of the prosecution shows that in the afternoon of 1 June 1997, while Nestor was on his way home from work, he chanced upon the Gandol brothers; Eduardo, Joseph and Celso drinking gin in Celso's house.[6] Nestor arrived home and took a rest in his yard. A little later in the evening, Eduardo and Joseph came and invited Nestor to join them for a drink in the house of Joseph at Taysan, Legazpi City.[7] Nestor accepted the invitation. Eduardo, Joseph and Nestor arrived at the drinking place at around 6:30 pm.[8] They positioned themselves in the living room around a table where two bottles of gin were set. At the center of the table was a big kerosene lamp that illuminated the living room. In a while, Ricardo, a brother-in-law of Eduardo and Joseph, arrived and joined the group.[9] After the group had almost consumed the first bottle, Joseph, with a knife at the back of his waist, stood up and went outside the house.[10] Joseph called on Ricardo to go outside as well. In deference to his brother-in-law, Ricardo obliged. Eduardo, who was also armed with a knife, followed Ricardo on his way out.[11] All of a sudden, Joseph stabbed Ricardo twice at the back. Eduardo followed his brother by stabbing Ricardo frontally a couple of times.[12] Ricardo fell down on his back. Dissatisfied, Eduardo again dealt the victim three stab blows on the chest. Eduardo approached Nestor threatening to kill the latter if he would not help in disposing of the body of the victim.[13] Overcome by fear, Nestor helped Eduardo in dragging the body to a nearby brook. Joseph remained at the scene and removed the traces of blood splashed all over the door of the house. After the body was thrown beside the brook, Eduardo and Nestor returned to the house with the former poking a knife at the latter's back.[14] In the house, Eduardo pushed Nestor to a chair. Eduardo heated his knife in the burning embers, and with the reddened knife, he pricked Nestor's right hand with it, and warned him not to tell anybody about the incident.[15] Thereafter, Joseph told Nestor to accompany him to Barangay Busay so he could not be used as a witness against the brothers. Afraid for his life, Nestor went with Joseph and Eduardo. On the way to Barangay Busay, Nestor was walking between the two brothers who were holding both his hands. They were proceeding to their destination when, by a stroke of luck, Nestor found a chance to escape when Eduardo ran towards the brook, and Joseph was a little far behind him. He then ran away and went home.[16] Nestor, however, did not linger in his house. He temporarily stayed with his uncle who resided in another barangay. It was while he was in the house of his uncle that he agreed to surrender to the police authorities.[17]

On the morning of 2 June 1997, responding police officer Batas went to the crime scene to conduct an investigation. When he reached the place, he interviewed Eduardo's mother who told him it was Eduardo who was responsible for the crime. When Eduardo came out of his mother's house, he admitted the killing and voluntarily surrendered to the police officer.[18]

When Dr. Kapuno conducted an autopsy on the corpse of Ricardo, he found ten stab wounds, six of which were in the chest, three at the back and one in the right arm. He likewise found lacerations in both wrists and abrasions in the chest. Dr. Kapuno opined that the abrasion in the chest was caused by the dragging of the victim face down with his clothes on. He stated that the victim was still alive when he was submerged under water and that the fatal wounds in the chest that reached the heart hastened the death of the victim.[19] He then concluded that the ultimate cause of the victim's death was asphyxia by drowning. Dr. Kapuno's autopsy report reveals the following findings:

FINDINGS:

- STAB WOUNDS

- ANTERIOR CHEST AND ABDOMEN

- 3.5 cm in length and 15 cm in depth along midsternal line at the nipple line, penetrating the sternum and left ventricle of the heart.

- 3.5 cm in length and 3 cm in depth, right costal area.
- 3.5 cm in length and 3.5 cm in depth, mi clavicular line, cm below the right nipple.
- 3.5 cm in length and 5.5 cm in depth, right costal angle.
- 3.5 cm in length, penetrating the abdominal cavity with evisceration of intestine, 3 cm below the umbilicus
- 3.5 cm in length, penetrating the abdominal cavity.
- POSTERIOR CHEST AND BACK
- 3.5 cm in length and 3 cm in depth, 3 cm lateral to the vertebral line at the level of posterior angle of scapula, left.
- 3.5 cm in length and 3 in depth, lumbar area, right
- 3.5 cm in length and 5 cm in depth, lumbar area, right.
- UPPER EXTREMITIES:
- 4 cm in length and 3 cm in depth, distal third of arm, posterior aspect, right.
- LACERATED WOUNDS:
- 1.0 cm, posterior aspect of wrist area, right
- 1.5 cm, middle third of forearm, posterior aspect, left.
- 3. 5.0 cm, gaping medial aspect of forearm, left.
- ABRASIONS:
- Confluent, bilateral, posterior chest.

OTHER FINDINGS:

- Positive for WASHERWOMAN'S HANDS
- Positive for Alcoholic smell of viscera

LUNGS

- doughy and positive for crepitations
- pale looking

HEART:

- Positive for Stab wound, running antero-posteriorly hitting the left vetricle.

PERICARDIUM & THORACIC CAVITY:

- Positive for Dark Reddish Blood, app. 300 mm.

CAUSE OF DEATH: Asphyxia by Drowning

CONTRIBUTORY CONDITION: Cardiac Tamponade, Secondary to Stab Wound at Heart.[20]

As to the funeral expenses incurred by the family of the deceased, the prosecution's witness, Rosita Asejo, testified that she paid P5,200.00 for the funeral services, as evidenced by the official receipt issued by the Nuestra

Señora de Salvacion funeral parlor.[21] She also testified that she spent another P19,835.00 for the wake and burial.[22]

Both Eduardo and Joseph advanced the theory of denial as they pointed at each other as the author of the killing.

On the witness stand, Eduardo admitted that he, Joseph, Nestor and Ricardo were having a drinking spree at Joseph's house. According to him, during the drinking session, Nestor and Ricardo were having an argument over the slow passing around of the glass of gin. Joseph got mad and asked the squabbling buddies, Nestor and Ricardo, to leave the living room. Thereafter, Joseph went outside and was followed by Ricardo. There, Joseph stabbed Ricardo.

Although Eduardo confessed that he and Nestor were the ones who dragged the lifeless body of the victim to a nearby brook, he, however, explained that he was coerced by Joseph into doing such.[23]

On his part, Joseph claimed that at some point during the drinking spree, he fell asleep and was awakened by the noise of Ricardo and Nestor quarrelling. Then he saw his brother Eduardo enter the house with a knife and told him: "Mano ta nadeskuedo ko si bayaw" (I accidentally stabbed my brother-in-law.)"[24]

In a decision dated 7 January 2002, the RTC found Eduardo guilty beyond reasonable doubt of the crime charged and imposed upon him the penalty of reclusion perpetua. The RTC stated that while relationship -- the victim was a brother-in-law of both Eduardo and Joseph -- could have earned the death penalty for Eduardo, he was able to present one mitigating circumstance of surrender to offset the aggravating circumstance of relationship. On the other hand, the RTC adjudged Joseph guilty of murder aggravated by relationship and imposed on him the supreme penalty of death.

The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, the accused Eduardo Gandol y Albor and Joseph Gandol y Albor are hereby found GUILTY beyond reasonable doubt of the crime of murder. Accordingly, the accused Eduardo Gandol y Albor is hereby sentenced to suffer the penalty of imprisonment of reclusion perpetua. The accused Joseph Gandol y Albor is hereby sentenced to suffer the supreme penalty of death.

Both accused are hereby ordered to pay jointly and severally, the sum of P5,000.00 as actual funeral expenses, P50,000.00 as indemnity for the death of Ricardo Asejo, Jr. and the further sum of P10,000.00 as moral damages pursuant to Art. 2219 (1) of the Civil Code. Costs against the accused.[25]

Eduardo and Joseph appealed the RTC decision to the Court of Appeals. In a decision dated 27 September 2006, the Court of Appeals affirmed the murder convictions of Eduardo and Joseph but modified the penalty imposed on the latter by reducing the penalty from death to reclusion perpetua pursuant to Republic Act No. 9346 which abolished the imposition of the death penalty. The judgment provides:

WHEREFORE, the January 7, 2002 Decision of the Regional Trial Court of Legazpi City, Branch 6, in Criminal Case No. 7517, is AFFIRMED with modification reducing the penalty imposed upon Joseph Gandol to RECLUSION PERPETUA. The Decision is further modified ordering both accused to pay jointly and severally, the amounts of P50,000.00 as moral damages and P25,000.00 as exemplary damages to the legal heirs of Ricardo Asejo, Jr. All other aspects of the Decision are maintained.[26]

Joseph and Eduardo separately filed their respective petitions before this Court. On 4 August 2008, this Court resolved to consolidate the petitions since the same set of facts and the same parties are involved in the said petitions.[27]

Eduardo assails the RTC and the Court of Appeals' findings which gave weight and credence to the testimony of

state witness Nestor. Eduardo stresses that the testimony of Nestor is not completely corroborated by the medico-legal report since according to Dr. Kapuno the stab wounds of the victim were caused by only one instrument; hence, there was only one assailant, contrary to Nestor's declaration that there were two attackers. Eduardo also points out that Nestor's account that the victim was defenseless when stabbed is belied by the medico-legal report which shows that the victim was able to defend himself as manifested by the defense wounds in the victim's forearm and wrist area. He adds that since the victim was able to parry the thrusts aimed at hurting him, treachery could not be appreciated in the killing of Ricardo. Eduardo likewise insists that treachery is totally lacking in the case since the killing was immediately preceded by a heated argument between the victim and Nestor. He adds that state witness Nestor should not be believed being a polluted source since he participated in the crime by helping dispose of the body of the victim and testified against Eduardo and Joseph in order to exculpate himself of the wrongdoing.

Joseph maintains that he was not involved in the killing of Ricardo. To support this thesis, he stressed that if the victim fell on his back as testified to by Nestor, he would have been dragged with his back rubbing against the ground. Joseph insists that the stab wounds at the back of the victim could not be his doing since Nestor testified that it was Eduardo who stabbed the victim several times when the latter fell on the ground. Since the body was dragged face down, ergo, it was in that position when Eduardo stabbed the victim. Thus, such facts would discount the possibility that Joseph even had the slightest participation in the incident.

Fundamentally, the question in these cases is the credibility of the parties and their witnesses.

Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood.[28] This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court unless it be manifestly shown that the trial court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[29]

In the instant case, the prosecution's main witness, Nestor, steadfastly pointed to brothers Eduardo and Joseph as the persons who assailed the victim. He narrated the circumstances that led to the killing in this fashion:

Q:

And when Joseph Gandol was already outside, what did he do, if any?

A:

He called up Ricardo Asejo, Jr., sir.

Q:

Will you please us exactly what were the words stated by Joseph Gandol in calling for Ricardo Asejo, Jr.?

A:

He called Ricardo Asejo, Jr. by the term as "bayaw". Joseph Gandol called Ricardo Asejo, Jr. in this manner: "bayaw marina", which if we translate it in English: "brother in-law, please come here."

Q:

What did Ricardo Asejo, Jr. do when he was called by his brother-in-law Joseph Gandol when Joseph Gandol was outside?

A:

Ricardo Asejo, Jr. also went outside in deference to the call of his brother-in-law Joseph Gandol, sir.

Q:

Now, before Joseph Gandol went out or stood up and went out or during the time that he was going out where you were, what did you observe from him when he went outside?

A:

When he stood up, I saw from behind his back a knife tucked in his waist, sir.

Q:

How were you able to see that knife tucked in his waist?

A:

When he stood up and facing me his back, I saw that knife tucked behind his waist, sir.

Q:

Now, after Ricardo went out of the house having been called by Joseph Gandol went out of the room where you were then drinking, what did Eduardo Gandol do if he did anything?

A:

After Ricardo Asejo, Jr. went outside, Eduardo Gandol also went outside, sir.

Q:

Now, what did you observe from Eduardo Gando when he went out of the house?

A:

I also saw a knife tucked in his waist, sir.

x x x x

Q:

Now, when Eduardo Gandol went out of the place where you were drinking, what next?

A:

A little while, I became uneasy and I [looked] towards the door. That was the time when Joseph Gandol stabbed Ricardo Asejo, Jr. on the left side of this back and followed by Eduardo Gandol by stabbing the deceased Ricardo Asejo, Jr. frontally.

Q:

Where was Joseph Gandol at the time when he stabbed the victim, Ricardo Asejo, Jr.?

A:

Joseph Gandol at that time was behind Ricardo Asejo, Jr., sir.

Q:

What hands did he use in stabbing Ricardo Asejo, Jr.?

A:

It was his left hand, sir.

Q:

Now, how about his right hand, what was the right hand doing while the left hand was stabbing Ricardo Asejo, Jr.?

A:

Joseph Gandol held Ricardo Asejo, Jr. on the right side of his shoulder then Eduardo thrust the knife at the back of the said Ricardo Asejo, sir.

Q:

How many times did Joseph Gandol stab Ricardo Asejo, Jr. at his back?

A:

Twice, sir.

Q:

Now, after Ricardo Asejo, Jr. was stabbed twice by Joseph Gandol at his back, what happened to him?

A:

When I actually saw Joseph Gandol stabbed Ricardo Asejo at his back, I also saw (sic) actually Eduardo Gandol stabbing the deceased frontally, sir.

Q:

How many times did Eduardo Gandol stab the victim on his front?

A:

I cannot just count how many times did Eduardo Gandol stabbed Ricardo Asejo, but it was several times, sir.

Q:

What happened to Ricardo Asejo, Jr. having been stabbed by Joseph Gandol at the back and by Eduardo Gandol several times on his front?

A:

Ricardo Asejo fell down.

Q:

And when he fell down, what happened next?

A:

Eduardo Gandol again stabbed Ricardo Asejo frontally.

Q:

So, after the stab wounds, Ricardo Asejo fell to the ground? Where was he facing when he fell to the ground?

A:

He fell on his back, sir.

Q:

Now, you said after he fell on his back to the ground, he was still stabbed how many times by Eduardo Gandol?

A:

I saw Eduardo Gandol stabbed Ricardo Asejo three (3) times, sir.[30]

Nestor vividly saw the incident as it was unfolding because it happened before his very eyes. He unmistakably identified Eduardo and Joseph as the attackers because they were drinking buddies and were still in a drinking session when the incident took place. Considering that the place was amply lit and taking into account that the stabbing happened in close proximity to where Nestor was, there was no doubt that what he recounted was what he saw.

This Court pored over the records of the case and found that Nestor's candid and straightforward narration of the brutal act perpetrated by Eduardo and Joseph on the night of the incident indubitably deserves credence.

The mere fact that Nestor was an accused-turned-state-witness does not necessarily render his testimony incredible. Nestor has no motive to perjure himself because neither Eduardo nor Joseph implicated him in the killing. Eduardo in fact corroborated Nestor's testimony that the latter was forced to help dispose of the body of the victim, not by his own volition. There is totally nothing that would implicate Nestor in the crime, much less motivate him, to declare a falsity. He did not renege from his agreement to give a good account of the crime, enough to indeed substantiate the conviction of his co-accused, Eduardo and Joseph, by the trial court. Some significant points: the damaging testimony of Nestor against petitioners was corroborated by the medico-legal report submitted and testified to by Dr. Kapuno. Nestor testified that he witnessed Joseph stab the victim at the back more than once, while Eduardo was doing the same frontally, dealing the victim several stab blows. Nestor likewise said he dragged the victim face down towards the brook upon Eduardo's behest. Dr. Kapuno declared that the victim suffered three stab wounds in his back, six in his chest and one in his arm. Dr. Kapuno also opined that the abrasion in the victim's chest was caused by his having been dragged face down. Indeed, the testimonial evidence of the prosecution tallied on material points with its physical evidence. All these point to one thing: Nestor has spoken only one language - that of truth.

Militating against petitioners' denial are their respective testimonies pointing to each other as the author of the crime. Eduardo categorically said he saw Joseph stab the victim, while Joseph declared it was Eduardo who committed the crime. These declarations, taken together with the positive testimony of Nestor, undeniably denigrate Eduardo and Joseph's defense of denial. As constantly pronounced by this Court, denial, like alibi, is a weak defense which becomes even weaker in the face of the positive identification of the accused by prosecution witnesses.[31] The denial of the accused constitutes self-serving negative evidence which can hardly be considered as overcoming a straightforward and credit-worthy eyewitness account.[32] As between a positive and categorical testimony which has a ring of truth on one hand and a bare denial on the other, the former is generally held to prevail.[33]

The fact alone that Nestor's testimony was silent on what had happened in the interregnum -- between the time the victim fell on his back and at the point when he was dragged face down -- would not mean that Joseph had no involvement in the offense nor will it cast doubt upon his guilt. In no uncertain terms, Nestor said he saw Joseph stab Ricardo on his back several times before the victim fell. Whether the body of the victim was pulled face down or otherwise is not material to this case, since it was already established that Joseph did stab the victim.

Eduardo is clutching at straws in making an issue out of Dr. Kapuno's declaration that only one instrument could

have been used that inflicted the stab wounds of the deceased; hence, only one perpetrator assaulted the victim. Eduardo deliberately twisted Dr. Kapuno's statement. What the physician simply meant was that only one kind of instrument or knife was used to wound the victim. For sure, Dr. Kapuno could not have determined the number of malefactors who inflicted wounds on the deceased because he did not witness the crime.

Eduardo's insistence that treachery is absent in the killing of Ricardo is not convincing.

The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[34] Frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed.[35] What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[36] Neither did the presence of "defense wounds" on the body of the victim rule out treachery.[37]

In the instant case, the victim, who heeded Joseph's call to go outside, was unsuspecting and unwary of what the assailants were about to do and, indeed, without warning, was suddenly attacked by the two. Said assault was so sudden and unexpected that the victim had not been given the opportunity to defend himself or repel the aggression. He was unarmed when he was attacked. Truly, all these circumstances indicate that the assault on the victim was treacherous. While he was at some point able to avoid some of the stab blows, that does not mean the aggression was not sudden. The survival instinct, which is inherent in every extant human being, may have worked well for the victim, or he may have been fortunate to have escaped some of the thrusts dealt unto him, but these things would not negate the presence of treachery. Neither may the presence of "defense wounds" on the body of the victim rule out treachery; Ricardo's act of parrying with his bare hands the first thrust inflicted by appellant was an instinctive reaction to an attack. After all, the law recognizes man's natural instinct to protect himself from impending danger.[38]

Eduardo also insists that treachery could not be appreciated since the killing was preceded by a heated argument between the victim and Nestor.

This argument is misplaced. The rule which ordains that there was no treachery if the victim was placed on guard, such as when a heated argument preceded the attack, can only apply when the contending parties to the squabble are the victim and the assailant.[39] In this case, as testified to by Eduardo, it was the victim and Nestor who were allegedly engaged in a heated argument. Nestor was not one of the victim's attackers. Had the victim verbally clashed with Joseph and Eduardo immediately prior to the stabbing, treachery would have been out of the picture. But such is not the case here.

In fine, this Court defers to the findings of the trial court which were affirmed by the Court of Appeals, there being no cogent reason to veer away from such findings.

In imposing upon Joseph and Eduardo their respective penalties, the RTC appreciated the aggravating circumstance of relationship. The Information in these cases, however, did not specifically allege the aggravating circumstance of relationship. Under the 2000 Rules of Criminal Procedure, which should be given retroactive effect following the rule that statutes governing court proceedings shall be construed as applicable to actions pending and undetermined at the time of their passage, every Information must state not only the qualifying but also the aggravating circumstances.[40] Hence, since the aggravating circumstance of relationship was not alleged in the Information, it could not be appreciated against them.

In the case of Eduardo, the mitigating circumstance of voluntary surrender should be considered in his favor. The evidence shows that appellant surrendered to a person in authority a day after the incident. This fact was not contested by the prosecution. Under Article 248 of the Revised Penal Code, as amended, murder is punishable by

reclusion perpetua to death. With no aggravating circumstances and one generic mitigating circumstance of voluntary surrender, the penalty imposable on the appellant, in accordance with Article 63(3) of the Revised Penal Code, should be the minimum period, which is reclusion perpetua.[41]

As to Joseph, he should be meted out the penalty of reclusion perpetua. As earlier stated, the penalty for murder is reclusion perpetua to death. Article 63 of the same Code provides that when the law prescribes two indivisible penalties, the lesser penalty shall be imposed when, in the commission of the deed, there are neither mitigating nor aggravating circumstances. In the present case, no mitigating circumstances were proven. Neither did the prosecution allege and prove any aggravating circumstance. Hence, the penalty should be reclusion perpetua.

The award of P50,000.00 for civil indemnity and P50,000.00 as moral damages is in accord with the prevailing jurisprudence.[42]

The award of exemplary damages is likewise in order since the qualifying circumstance of treachery was proven. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of P25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code.[43] This kind of damage is intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.[44]

During the trial, the prosecution was able to present evidence supported by receipts that the family of the victim incurred actual damages for funeral expenses of P5,2000.00. However, *People v. Dela Cruz*,[45] it was held that when actual damages proven by receipts during the trial amount to less than P25,000.00, as in the present case, the award of temperate damages for P25,000.00 is justified in lieu of actual damages for a lesser amount. This Court ratiocinated that it was anomalous and unfair that the heirs of the victim who succeeded in proving actual damages amounting to less than P25,000.00 would be in a worse situation than those who might have presented no receipts at all but would be entitled to P25,000.00 temperate damages. Hence, in lieu of actual damages, the heirs of the victim are entitled to P25,000.00 as temperate damages.

WHEREFORE, the Decision of the Court of Appeals dated 27 September 2006 which affirmed the 7 January 2002 Decision of the Regional Trial Court of Legazpi City, finding Joseph A. Gandol and Eduardo A. Gandol GUILTY of the crime of Murder and imposing upon each of them the penalty of reclusion perpetua, is hereby AFFIRMED with modifications. Eduardo and Joseph are ordered to pay solidarily the victim's heirs P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as exemplary damages and P25,000.00 as temperate damages.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Reyes, and Brion,[*] JJ., concur.

* Associate Justice Arturo D. Brion was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 24 November 2008.

[1] Penned by Associate Justice Elvi John S. Asuncion with Associate Justices Jose Catral Mendoza and Sesinando E. Villon, concurring; Rollo of G.R. No. 180510, pp. 3-13.

[2] Penned by Judge Vladimir B. Brusola.

[3] CA rollo, p. 14.

[4] Records, p. 60.

- [5] Id. at 103.
- [6] TSN, 9 December 1998, p. 5.
- [7] Id. at 8.
- [8] Id.
- [9] TSN, 4 December 1998, p. 4.
- [10] Id. at 7.
- [11] Id. at 8.
- [12] Id. at 9.
- [13] Id. at 11.
- [14] Id. at 11.
- [15] Id. at 13.
- [16] Id. at 17.
- [17] Id. at 18.
- [18] TSN, 21 January 1998, p. 12.
- [19] TSN, 5 February 1998, pp. 18-19.
- [20] Exhibit "A"; records, pp. 153-155.
- [21] TSN, 11 March 1998, p. 8.
- [22] Id. at 9-10.
- [23] TSN, 21 April 1999, pp. 10-11.
- [24] TSN, 6 March 2001, p. 6.
- [25] Records, p. 313.
- [26] CA rollo, p. 246.
- [27] Rollo of G.R. No. 180510, p. 29.
- [28] *People v. Matito*, 468 Phil. 14, 24-25 (2004).
- [29] *People v. Castillo*, G.R. No. 118912, 28 May 2004, 430 SCRA 40, 50.
- [30] TSN, 4 December 1998, pp. 7-10.
- [31] *People v. Waggay*, G.R. No. 98154, 9 February 1993, 218 SCRA 742-753-754; *People v. Caballes*, G.R. Nos. 93437-45, 12 July 1991, 199 SCRA 152, 167.
- [32] Id.
- [33] Id.
- [34] *People v. Belaro*, 367 Phil. 90, 107 (1999).

[35] Id.

[36] *People v. Pidoy*, 453 Phil. 221, 230 (2003).

[37] *People v. Abrenica*, 322 Phil. 53, 63 (1996).

[38] *Soplente v. People*, G.R. No. 152715, 29 July 2005, 465 SCRA 267, 285-286.

[39] *People v. Lopez*, G.R. No. 112448, 30 October 1995, 249 SCRA 610, 625-626.

[40] *People v. Demate*, 465 Phil. 127, 147 (2004).

[41] *People v. Rollon*, 457 Phil. 378, 402 (2003).

[42] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 663.

[43] Id.

[44] Id.

[45] 459 Phil. 130, 138-139 (2003).

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