

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESSIE BALLESTA, ACCUSED-APPELLANT.*G.R. No. 181632. September 25, 2008*

Ponente: CHICO-NAZARIO, J.

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This is an appeal from the Decision[1] dated 28 September 2007 of the Court of Appeals in CA-G.R. CR-HC No. 00121, which affirmed with modification the Decision,[2] dated 18 January 2000 of the Regional Trial Court (RTC), 10[th] Judicial Region, Branch 8, Malaybalay City, convicting the appellant Jessie Ballesta of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

A criminal Complaint[3] charging Raul Colongan, "John Doe" and "Peter Doe" with the crime of murder was filed before the Municipal Circuit Trial Court (MCTC), Don Carlos, Bukidnon, for preliminary investigation. Further investigation conducted by the National Bureau of Investigation (NBI), Cagayan de Oro City, resulted, however, in certain significant discoveries such that after preliminary investigation, the MCTC issued an Order[4] dropping Raul Colongan from the Complaint. Instead, it ordered the inclusion of the appellant as one of the accused therein.

Resultantly, appellant was charged with the crime of murder in an Information,[5] the accusatory portion of which reads:

That on or about the 19[th] day of April 1997, in the evening, particularly at New Market, Poblacion, [M]unicipality of Don Carlos, [P]rovince of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant] together with two other persons whose identities are not yet known, conspiring, confederating and mutually helping one another, with intent to kill by means of treachery, evidence (sic) premeditation and abuse of superior strength with the use of firearm with which they were conveniently provided, did then and there willfully, unlawfully and criminally attack, assault and shoot QUADRITO COSIÑERO, mortally wounding the latter which injury caused the death of QUADRITO COSIÑERO to the damage and prejudice of the legal heirs of (sic) QUADRITO COSIÑERO in such amount as may be allowed by law.[6]

When arraigned, appellant, with the assistance of counsel de oficio, pleaded NOT GUILTY to the crime charged. Accordingly, trial on the merits ensued.

The prosecution presented the following witnesses: (1) Leonisa Cosiñero (Leonisa), wife of the deceased-victim; (2) Mailene Cosiñero (Mailene), daughter of the deceased-victim; and (3) Atty. Alex Cabornay (Atty. Cabornay), a Senior Investigation Agent of the NBI, Cagayan de Oro City.

Leonisa testified that at about 6:30 in the evening of 19 April 1997, her husband, Quadrito Cosiñero, the deceased victim, was inside their family-owned store located at the New Public Market, Don Carlos, Bukidnon, transacting with a customer. As their store usually closed at 6:30 in the evening, she, their children and sales personnel were already outside the store waiting for her husband to signal their departure. A few minutes thereafter, her husband

went out of their store and said "Let us go." He then proceeded towards the driver's seat of their pick-up truck which was parked just outside their store. Leonisa also walked towards the front passenger seat of their pick-up truck. However, before she could even reach the front passenger seat of the said vehicle, she heard a gunshot coming from the other side of their vehicle. Out of fear, she immediately opened the door of the pick up, sat on the front passenger seat and turned to the driver's seat to look for her husband, but she did not find him there. Hastily, the appellant pulled her out of the vehicle causing her to stagger and fall. She stood up and ran towards the pharmacy where her children were. The appellant then sat in the front passenger seat of the deceased-victim's pick-up truck and searched the compartment of the same. Failing to find anything, the appellant ran away from the scene.[7]

Shortly thereafter, Leonisa saw her bloodied husband on the ground, and she shouted for help. Her husband was boarded into a tricycle and brought to Simbolan Hospital, Don Carlos, Bukidnon, where he died.[8] The cause of her husband's death was cardio-respiratory arrest secondary to intracranial hemorrhage due to gunshot wound sustained at the occiput, right to "supraorbital bone" within the "area of the left eye, nasal side." [9]

Mailene corroborated the testimony of her mother in all aspects, particularly as regards the identity of the appellant. She stated that at about 6:30 in the evening of 19 April 1997, while she was playing with her siblings in front of their store which was adjacent to a pharmacy, she saw the appellant scouring their displayed rice for sale. She disclosed that it was also the appellant who pulled her mother out of their pick-up truck. She then saw the appellant sit in the front passenger seat. Afterwards, the appellant searched the compartment of their vehicle. Thereafter, she did not see where the appellant went.[10]

Atty. Cabornay stated that it was the police officers of Don Carlos, Bukidnon, who made the initial investigation regarding the killing of Quadrito Cosiñero. The initial investigation disclosed that it was a certain Raul Colongan who shot the victim. When the case was forwarded to their office, Raul Colongan was already in their custody, so they immediately forwarded the records to the MCTC for preliminary investigation. In the course of a follow-up investigation, it turned out that it was the appellant and not Raul Colongan who was positively identified by the wife and the daughter of the deceased victim as the person present at the crime scene. Considering that the case was already forwarded to the MCTC for preliminary investigation, Atty. Cabornay then moved for the incorporation of the name of the appellant as one of the suspects in the killing of Quadrito Cosiñero. The MCTC acted on his motion and ordered the filing of an amended complaint so as to include the name of the appellant as one of the suspects therein and the dropping of the name of Raul Colongan, as there was no iota of evidence that could be used as basis to implicate him as among the perpetrators in the killing of the victim.[11] In compliance therewith, he filed an amended complaint incorporating the name of the appellant as one of the suspects therein and thereby removed the name of Raul Colongan.[12]

For its part, the defense presented the lone testimony of the appellant who interposed the defense of alibi.

The appellant claimed that at about 6:30 in the evening of 18 April 1997, he was at his house in Pinamaloy, Don Carlos, Bukidnon. Thereafter, his wife called his attention because there were three persons, whom he later identified as Edon, Alias Abu and Alias Makung, all from Maguindanao, looking for Joel Bacalso (Joel), his kumpare. He then accompanied the three to Joel's house. After dinner, he and Joel accompanied the three visitors to the house of his aunt, where the three visitors slept for the night.[13]

The next day, or on 19 April 1997, immediately after he woke up, he went to the house of his aunt and found Joel talking to the three visitors. One of the visitors told him that they were going to kidnap a person named Joe Caring from Don Carlos, Bukidnon, and that he and Joel would only need to point to them Joe Caring and the two of them would be given one million pesos. They immediately proceeded to Joe Caring's house at Don Carlos,

Bukidnon. Upon arrival thereat, appellant inquired as to the whereabouts of Joe Caring, but he was told that Joe Caring went to Cagayan de Oro City.[14] After learning that their intended victim was out of town, the three visitors planned to kidnap "just anyone else," considering that they had already used all their supplies in going to Don Carlos, Bukidnon.[15] The appellant then told Joel that he would go ahead to the New Market, Don Carlos, Bukidnon, where he worked as a dispatcher of Speed Zone buses. He stayed there until 5:00 p.m. Thereafter, he went to the place of a certain Paalam to eat. Then, he proceeded to the billiard hall near the place of Paalam. Upon his arrival at the billiard hall, he was called by a police officer and was asked to slaughter the latter's pig. Later, he went to the new market site to pay his debt. While on his way there, Eddie Acop and Tatay Polgo invited him for a drink. After a few minutes, he left and looked for a ride going to the new market. Again, he was called by a friend for a drink at the Lily Palomares store. It was already about 6:45 p.m. or 7:00 p.m. at that time. While drinking thereat, he heard a commotion outside the store. After a short while, he learned that Quadrito Cosiñero was robbed and shot.[16]

On his way home, Joel informed him that the three visitors from Maguindanao were the persons who shot Quadrito Cosiñero. Joel likewise requested that he and the three visitors be accompanied by the appellant to the highway to wait for a bus as the three visitors were already leaving to which appellant acceded.[17]

The appellant similarly alleged that from 6 October 1997 until 16 November 1997, he stayed in Bohol because his maternal grandmother died. When he returned home, he was arrested by the NBI at the port of Cagayan de Oro City for the death of the victim.[18]

On 18 January 2000, the trial court rendered its Decision finding the appellant guilty beyond reasonable doubt of the crime charged, the dispositive portion of which is quoted as follows:

WHEREFORE, judgment is entered finding [appellant] Jessie Ballesta GUILTY of the crime of murder as charged. He is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of his victim Quadrito Cosiñero the sum of P50,000.00 and moral damages of P30,000.00.[19]

The records of this case were originally transmitted to this Court on appeal. Pursuant to *People v. Mateo*,[20] the records were transferred to the Court of Appeals for appropriate action and disposition.

In his brief, appellant raises the following errors, viz:

- THE TRIAL COURT ERRED IN NOT FINDING THAT THE POSITIVE IDENTIFICATION OF THE [APPELLANT] BY THE PROSECUTION WITNESSES WAS A PRODUCT OF AN AFTERTHOUGHT.
- THE TRIAL COURT ERRED IN REJECTING [APPELLANT'S] DEFENSE OF ALIBI.
- ASSUMING ARGUENDO, THAT THE APPELLANT CONSPIRED WITH THE KILLER OF THE VICTIM, THE TRIAL COURT ERRED IN CONVICTING THE [APPELLANT] OF MURDER DESPITE THE INSUFFICIENCY OF EVIDENCE TO PROVE THAT THE KILLING WAS ATTENDED BY THE QUALIFYING CIRCUMSTANCE OF TREACHERY.[21]

On 28 September 2007, the Court of Appeals rendered its Decision affirming with modification the Decision of the trial court, the decretal portion of which reads:

WHEREFORE, the appeal is DENIED. The Decision of the RTC is hereby AFFIRMED, but with the MODIFICATION that [appellant] Jessie Ballesta is liable only as an ACCOMPLICE, and not as a principal, to the crime of Murder. His sentence is therefore REDUCED to 12 years of prision mayor as minimum, to 17 years and 4 months of reclusion temporal as maximum. Moreover, while the award of P50,000.00 as indemnity for the death of the victim is also affirmed, the award of moral damages is hereby increased to P50,000.00.[22]

The appellant is before this Court seeking a reversal of his conviction.

The appellant contends that the failure of Leonisa, the wife of the deceased victim, to mention his name as the person who pulled her from the inside of the pick-up truck when she was investigated by the police, as well as during preliminary investigation, makes her testimony before the court a quo doubtful. In the same way, Mailene, the daughter of the victim, had not properly and positively identified him during the investigation as he was only identified by Mailene through the pictures furnished by the NBI, which pictures were taken from his house. Thus, he should be acquitted of the crime charged as his positive identification by the prosecution witnesses was a product of an afterthought.

Appellant further argues that the trial court erred in rejecting his defense of alibi because it was clearly established that during the killing of the deceased victim, he was somewhere else.

Finally, appellant claims that assuming *arguendo* that he conspired in the killing of the deceased victim, treachery should not be appreciated as a qualifying circumstance to change the crime committed to murder. He alleges that there was no direct proof that treachery was employed to insure the execution of the crime, as none of the prosecution witnesses saw how the deceased victim was shot.

Originally, the appellant was not considered as a suspect because the result of the initial investigation conducted by the police officers of Don Carlos, Bukidnon, pointed to a certain Raul Colongan as the person who shot the victim. It appears, however, that the wife of the victim mentioned the name of Raul Colongan in her affidavit only because of the information given to her by the police officers that somebody saw Raul Colongan shoot her husband. She was sure, though, that she did not see him at the crime scene.

Upon the other hand, the records revealed that during further investigation conducted by the NBI, the wife of the deceased victim categorically and repeatedly stated that she saw the appellant at the crime scene right after she heard the gunshot. She maintained that the person who pulled her out of their pick-up truck was the appellant himself. This statement was corroborated by her daughter, who disclosed that the very person whom she saw scouring their displayed rice for sale was the same person who pulled her mother out of their vehicle and thereafter searched the compartment thereof.

It bears emphasis that the pictures of the appellant shown to the daughter of the victim show that the appellant posed with four to five other persons. Upon being shown the pictures, she directly and unhesitatingly pointed to the appellant as the person who scoured their displayed rice for sale, and as the one who pulled her mother out of the vehicle. These circumstances led to the amendment of the complaint for murder by dropping Raul Colongan as one of the suspects and including the name of the appellant in his stead.

Also, during the testimony of the wife and the daughter of the victim before the trial court, they similarly identified positively the appellant as the person whom they actually saw at the crime scene immediately after the gunshot. As found by both lower courts, the testimonies of the wife and the daughter of the victim as regards the identity of the appellant were categorical, consistent and candid. Thus, this Court cannot cast any doubt on the credibility of the said witnesses. Here we quote the testimonies of the wife and the daughter of the victim:

Direct testimony of the victim's wife:

Q:

And were you able to reach the seat at the front seat?

A:

Before I reached, there was a gun burst.

Q:

And what did you do when you heard the shot?

A:

I opened the door of the pick-up and sat down.

Q:

And what happened next?

A:

When I sat down, I looked at where my husband was supposed to be, but I did not find him.

Q:

And after that, what happened next?

A:

After turning to look for my husband, there was a person who pulled me strongly which caused me to stagger and fell down.

Q:

And when you fell, what happened?

A:

I immediately stood up and stood beside the post near our store and then ran towards the pharmacy near our store.

Q:

You said you were pulled by a man which caused you to stagger and fell and you said you were able to hold a post near the store, do you know who this person who pulled you?

A:

Yes.

Q:

Will you please look and at present you said you know, if he is around could you identify him?

Q:

By pointing your finger to anybody here, please tell who that person who pulled you out of the vehicle?

A:

(Witness is pointing to a person inside the courtroom who identifies himself as Dioscoro Ballesta).[23]

Q:

Do you know his name?

A:

Yes.

Q:

Who (sic) is his name?

A:

I know him to be Jessie Ballesta.[24]

Direct testimony of the victim's daughter:

Q:

Now, at 6:30 o'clock in the evening, you said that was the usual time that your business closes, where was your mother located at that precise time, 6:30 in the evening?

A:

Outside our store.

x x x x

How about your father, where was he?

He was inside the store.

x x x x

Q:

Now, at a particular time before your store close few minutes before your store, can you recall if there was somebody who was standing near the place where you were selling your rice?

A:

Yes.

Q:

What was he doing, if you know?

A:

He was scouring the displayed rice for sale.

Q:

Can you still recall his face even until this moment?

A:

Yes.

x x x x

Q:

You said awhile ago that you identified that person scouring rice at the place where the rice situated on that particular date, [19 April 1997], at 6:30 o'clock in the evening, if that fellow is around within the four corners of this sala of the Honorable Court, will you please point to him?

A:

(Witness is pointing to a person inside the courtroom who has already identified himself as Dioscoro Ballesta).[25]

Based on the foregoing, it cannot be said that the positive identification of the appellant was a product of an afterthought.

It is well-entrenched that the findings of the trial court on the credibility of witness deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. We have recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of their unique opportunity to observe the witnesses first-hand; and to note their demeanor, conduct and attitude under grueling examination. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth.[26] The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[27] Thus, except for compelling reasons, we are doctrinally bound by the trial court's assessment of the credibility of witnesses.[28] In this case, there was no cogent reason to deviate from the findings of both lower courts.

Moreover, there was no indication that the wife and the daughter of the deceased victim were improperly motivated when they testified against the appellant. As a rule, absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit.[29] Leonisa was the wife of the deceased victim while Mailene was his daughter; thus, it would be unnatural for them, being relatives and interested in vindicating the crime, to implicate someone other than the real culprit, lest the guilty go unpunished. The earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence, and blame one who is innocent of the crime.[30] In this case, Leonisa and Mailene's act of testifying against the appellant was motivated only by no other motive than their strong desire to seek justice for what had happened to the deceased victim.

To at least downgrade the crime charged against him, the appellant argues that the qualifying circumstance of treachery was not sufficiently proven by the prosecution.

It is settled that treachery cannot be presumed, but must be proved by clear and convincing evidence as conclusively as the killing itself. To appreciate treachery, two (2) conditions must be present, namely, (a) the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate, and (b) the means of execution were deliberately or consciously adopted. This Court has also previously held that where treachery is alleged, the manner of attack must be proven. Where no particulars are shown as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed, treachery cannot be appreciated as a qualifying circumstance.[31]

In the instant case, treachery cannot be appreciated, considering that the wife and the daughter of the victim did not see the initial stage and particulars of the attack on the victim. This Court has held that where all indicia tend to support the conclusion that the attack was sudden and unexpected, but there are no precise data on this point, treachery cannot be taken into account. Treachery cannot be established from mere suppositions, drawn from the circumstances prior to the moment of the aggression, that the accused perpetrated the killing with treachery. When the witnesses did not see how the attack was carried out and cannot testify on how it began, the trial court cannot presume from the circumstances of the case that there was treachery. Circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence.[32]

The Information also alleged that evident premeditation and abuse of superior strength attended the killing.

For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act.[33] Like any other circumstance that qualifies a killing as murder, evident premeditation must be established by clear and positive proof; that is, by proof beyond reasonable doubt.[34] The essence of premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[35]

In this case, the prosecution failed to show the presence of any of these elements. The record is bereft of any evidence to show evident premeditation. It was not shown that the appellant and his two other co-accused, who remain at large, meditated and reflected upon their decision to kill the victim. Likewise, there is a dearth of evidence that the appellant, as well as his two co-accused, persisted in their plan to kill the victim. As this Court has repeatedly held, the premeditation to kill must be plain, notorious and sufficiently proven by evidence of outward acts showing the intent to kill.[36] In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient.[37]

The qualifying circumstance of abuse of superior strength cannot also be appreciated. This aggravating circumstance is present when the aggressors purposely use excessive force out of proportion to the means of defense available to the person attacked.[38] In this case, however, the prosecution failed to prove that the appellant purposely used an excessive force in attacking the victim, considering that the prosecution witnesses did not actually see how the victim was shot.

Absent the qualifying circumstances of treachery, evident premeditation and abuse of superior strength, the appellant could only be liable for homicide.

We now proceed to determine the liability of the appellant.

This Court agrees with the appellate court that the appellant can only be held liable as an accomplice. As the appellate court observed, there was lack of sufficient evidence of conspiracy between the appellant and the three visitors, such that doubt could not be removed as to whether the appellant was a principal in the killing of the victim. As found by the Court of Appeals, "a closely-[knit] connection existed between the events such that [appellant's] previous and simultaneous acts were not isolated from the [killing of the victim]. He positioned himself in front of the store, possibly to act as a lookout, but in any case ready to enter the truck to search and rob items inside. There could be no other conclusion that [appellant] knew of the criminal design of the perpetrators, and that he assented to, and cooperated in the accomplishment of the crime." [39] However, the testimonies and evidence of the prosecution were not sufficient to prove with moral certainty appellant's participation as principal in the killing of the victim.

There is also lack of sufficient evidence of conspiracy between the appellant and the three visitors. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It may be deduced from the manner in which the offense is committed, as when the accused acted in concert to achieve the same objective. In order to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or in furtherance of conspiracy. The overt act may consist of active participation in the actual commission of the crime itself or moral assistance to co-conspirators by exerting moral ascendancy over them by moving them to execute or implement the conspiracy. Mere presence at the scene of the incident, knowledge of the plan and acquiescence thereto are not sufficient grounds to hold a person liable as a conspirator.[40] As testified to by the daughter of the victim, the appellant was not actually seen to have shot the victim, as he was only seen pulling her mother out of the vehicle immediately after the shooting

incident. Lacking sufficient evidence of conspiracy and there being doubt as to whether appellant acted as a principal or just a mere accomplice, the doubt should be resolved in his favor and is thus held liable only as an accomplice.[41]

The failure of the prosecution to prove the existence of conspiracy does not eliminate any criminal liability on the part of the appellant. Although he cannot be convicted as a co-principal by reason of the conspiracy, he can still be liable as an accomplice. Where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether the appellant acted as principal or as accomplice will always be resolved in favor of the milder form of criminal liability - that of a mere accomplice.[42] Thus, it is only proper to hold the appellant guilty as an accomplice of the crime of homicide.

The appellant interposed the defense of alibi as a futile attempt to exonerate himself from the crime charged. Settled is the principle that alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable, but also because it can be easily fabricated.[43] Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.[44] For alibi to succeed as a defense, the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime.[45]

In the case at bar, the appellant insists that at the time of the shooting incident, he was at the Lily Palomares store at the new market drinking with a friend. The appellant failed to notice that the shooting incident also happened in the new market, the very same place where he was at the time of the shooting incident. Thus, it was not physically impossible for the appellant to be present at the scene of the crime. More so, such defense of alibi interposed by the appellant becomes weaker because it is uncorroborated. Despite the fact that he mentioned several people in his testimony, he never presented any of those people to testify on his behalf. In view of our finding that the prosecution witnesses have no motive to falsely testify against the appellant, the defense of alibi, in this case uncorroborated by other witnesses, should be completely disregarded.

All told, the appellant is guilty as an accomplice in the crime of homicide. Under Article 249 of the Revised Penal Code, as amended, the penalty imposed for the crime of homicide is reclusion temporal. Since appellant is only an accomplice, the imposable penalty is one degree lower than that imposable for the principal, i.e., prision mayor. There being neither aggravating nor mitigating circumstances, the said penalty shall be imposed in its medium period.[46] Applying the Indeterminate Sentence Law, appellant is accordingly sentenced to suffer the prison term of 4 years, 2 months and 1 day of prision correccional, as minimum, to 8 years and 1 day of prision mayor, as maximum.

We now go to the award of damages. When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[47]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[48] We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under prevailing jurisprudence,[49] the award of P50,000.00 to the heirs of the victim as civil indemnity is proper.

As to actual damages, the heirs of the victim are not entitled thereto, because said damages were not duly proved with reasonable degree of certainty.[50] Similarly, the heirs of the victim are not entitled to exemplary damages in the amount of P25,000.00, since the qualifying circumstance of treachery was not properly established.[51]

Anent moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[52] The award of P50,000.00 as moral damages is likewise in order.

The award of P25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[53] Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.[54] Thus, this Court similarly awards P25,000.00 as temperate damages to the heirs of the deceased victim.

WHEREFORE, all the foregoing considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00121 is hereby MODIFIED as follows: (1) appellant Jessie Ballesta is hereby found GUILTY beyond reasonable doubt as an accomplice in the crime of homicide; (2) there being neither aggravating nor mitigating circumstances in the commission of the crime, the appellant is hereby sentenced to suffer the penalty of 4 years, 2 months and 1 day of prision correccional, as minimum, to 8 years and 1 day of prision mayor, as maximum; (3) the appellant is likewise ORDERED to pay the heirs of Quadrito Cosiñero the amount of P25,000.00 as temperate damages. The amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages, already awarded by the appellate court, are MAINTAINED.

SO ORDERED.

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

[1] Penned by Associate Justice Michael P. Elbinias with Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr., concurring; rollo, pp. 4-16.

[2] Penned by Judge Vivencio P. Estrada, CA rollo, pp. 14-18.

[3] Records, p. 4.

[4] Id. at 27.

[5] CA rollo, p. 7.

[6] Id.

[7] TSN, 23 November 1998, pp. 6-17.

[8] Id. at 17-18.

[9] As evidenced by a Post Mortem Examination Report, dated 20 April 1997; Records, p. 5.

[10] TSN, 23 November 1998, pp. 67-79.

[11] As evidenced by an Order dated 9 July 1997; Records, p. 27.

[12] TSN, 24 February 1999, pp. 3-14.

[13] TSN, 28 June 1999, pp. 6-10.

[14] Id. at 11-14.

[15] Id. at 24-25.

[16] Id. at 14-21.

[17] Id. at 22-25.

[18] Id. at 26-28.

[19] CA rollo, p. 18.

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

[21] CA rollo, pp. 54-55.

[22] Rollo, p. 16.

[23] In the appellant's direct testimony he stated that his name is Dioscoro Ballesta. He also stated that he is the same Jessie Ballesta, the accused in the present case (TSN, 28 June 1999, p. 3).

[24] TSN, 23 November 1998, pp. 14-16.

[25] Id. at 66-68.

[26] *People v. Benito*, 363 Phil. 90, 97-98 (1999).

[27] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

[28] *People v. Benito*, supra note 26 at 98.

[29] *People v. Rendoque*, 379 Phil. 671, 685 (2000).

[30] *People v. Dulanas*, G.R. No. 159058, 3 May 2006, 489 SCRA 58, 76-77.

[31] *People v. Samudio*, 406 Phil. 318, 329 (2001).

[32] *People v. Santiago*, 396 Phil. 200, 207 (2000), citing *People v. Silva*, 378 Phil. 1267, 1275 (1999) and *People v. Lopez*, 371 Phil. 852, 864 (1999).

[33] *People v. PO3 Tan*, 411 Phil. 813, 836-837 (2001).

[34] *People v. Manes*, 362 Phil. 569, 579 (1999).

[35] *People v. Rivera*, 458 Phil. 856, 879 (2003).

[36] *People v. Tan*, 373 Phil. 190, 200 (1999); *People v. Mahinay*, 364 Phil. 423, 436 (1999); *People v. Chua*, 357 Phil. 907, 921 (1998).

[37] *People v. Tan*, id.

[38] *People v. Garcia*, 435 Phil. 283, 295 (2002).

[39] Rollo, p.14.

[40] *People v. Santiago*, supra note 32 at 210, citing *People v. Bautista*, 387 Phil. 183, 204-205 (2000), *People v. Ragundiaz*, 389 Phil. 532, 551 (2000) and *Salvatierra v. Court of Appeals*, 389 Phil. 66, 74 (2000).

[41] *People v. Santiago*, supra note 32 at 211-212.

[42] *People v. Samudio*, supra note 31 at 333.

[43] *People v. Monsayac*, 367 Phil. 55, 65 (1999).

[44] *People v. Reyes*, 447 Phil. 668, 677 (2003).

[45] People v. Ortizuela, G.R. No. 135675, 23 June 2004, 432 SCRA 574, 584.

[46] ART. 64. Rules for the application of penalties which contain three periods.- x x x.

- When there are neither aggravating nor mitigating circumstances, they shall imposed the penalty prescribed by law in its medium period.

[47] People v. Beltran, Jr., G.R. No. 168051, 27 September 2006, 503 SCRA 715, 740.

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

[49] People v. Pascual, G.R. No. 173309, 23 January 2007, 512 SCRA 385; People v. Cabinan, G.R. No. 176158, 27 March 2007, 519 SCRA 133.

[50] People v. Tubongbanua, supra note 48 at 742.

[51] People v. Beltran, Jr., supra note 47 at 741.

[52] People v. Bajar, 460 Phil. 683, 700 (2003).

[53] People v. Dacillo, G.R. No. 149368, 14 April 2004, 427 SCRA 528, 538.

[54] People v. Surongon, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.

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