

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MITSUEL L. ELARCOSA AND JERRY B. ORIAS, ACCUSED-APPELLANTS.*G.R. No. 186539. June 29, 2010*

Ponente: VELASCO JR., J.

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This is an appeal from the February 28, 2008 Decision of the Court of Appeals (CA) in CA G.R. CEB-CR-H.C. No. 00608 entitled *People of the Philippines v. Mitsuel L. Elarcosa and Jerry B. Orias* which held accused-appellant Jerry B. Orias guilty of multiple murder. The CA Decision modified the December 17, 1996 Decision in Criminal Case No. 567 of the Regional Trial Court (RTC), Branch 56, Himamaylan, Negros Occidental, which held accused-appellant Orias liable for robbery with multiple homicide.

The Facts

In the evening of September 27, 1992, Jorge, Segundina, Jose and Rosemarie, all surnamed dela Cruz, heard some persons calling out to them from outside their house, which is located in Barangay Amotay, Binalbagan, Negros Occidental. Since the voices of these persons were not familiar to them, they did not open their door immediately, and instead, they waited for a few minutes in order to observe and recognize these persons first. It was only when one of them identified himself as Mitsuel L. Elarcosa (Elarcosa), an acquaintance of the family, that Segundina lighted the lamps, while Jose opened the door.[1]

Elarcosa and his companion, accused-appellant Orias, then entered the house and requested that supper be prepared for them as they were roving. Both Elarcosa and accused-appellant Orias were Citizen Armed Forces Geographical Unit (CAFGU) members.[2] Segundina and Rosemarie immediately went to the kitchen to prepare food, while Jose and Jorge stayed in the living room with Elarcosa and accused-appellant Orias.[3]

Since the rice was not cooked yet, Rosemarie first served a plate of suman to Elarcosa and accused-appellant Orias, who were then engaged in a conversation with her father, Jorge, and her brother, Jose. She heard accused-appellant Orias asked her brother why the latter did not attend the dance at Sitio Nalibog. Her brother replied that he was tired. Suddenly thereafter, Elarcosa and accused-appellant Orias stood up and fired their guns at Jose and Jorge.[4]

Segundina, who was busy preparing supper in the kitchen, ran towards the living room and embraced her son, Jose, who was already lying on the floor. Elarcosa and accused-appellant Orias then immediately searched the wooden chest containing clothes, money in the amount of forty thousand pesos (PhP 40,000) intended for the forthcoming wedding of Jose in October, and a registration certificate of large cattle. During this time, Rosemarie escaped through the kitchen and hid in the shrubs, which was about six (6) extended arms length from their house. She heard her mother crying loudly, and after a series of gunshots, silence ensued.[5]

Shortly thereafter, Rosemarie proceeded to the house of her cousin, Gualberto Mechabe, who advised her to stay

in the house until the morning since it was already dark and he had no other companion who could help them. The following morning, Rosemarie returned to their house where she found the dead bodies of her parents and her brother.[6] The money in the amount of PhP 40,000, as well as the certificate of registration of large cattle, were also gone.[7]

Eventually, Elarcosa and accused-appellant Orias, as well as a certain Antonio David, Jr., were charged with robbery with multiple homicide in an Information which reads as follows:

The undersigned Provincial Prosecutor accuses MITSUEL ELARCOSA y LOMINOK, JERRY ORIAS y BESARIO alias "Boy" and ANTONIO DAVID, JR. y MORE ALIAS "Junior" of the crime of ROBBERY WITH MULTIPLE HOMICIDE, committed as follows:

That on or about the 27[th] day of September, 1992, in the Municipality of Binalbagan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring confederating together and mutually helping one another, and with grave abuse of confidence, armed with different kinds of firearms, and with intent of gain, entered the house of GEORGE DE LA CRUZ and, once inside, by means of violence and intimidation of persons, did, then and there, willfully, unlawfully and feloniously take, steal and carry away against the consent of the owners thereof, cash money amounting to FORTY THOUSAND PESOS (P40,000.00), Philippine Currency, to the damage and prejudice of the said owners in the aforestated amount.

That by reason or on the occasion of the said robbery, the said accused for the purpose of enabling them to take, steal and carry away the aforestated amount at the same time did, then and there, willfully, unlawfully and feloniously, with treachery and evident premeditation and with intent to kill, attack, assault, shot and wound said JORGE (GEORGE) DE LA CRUZ, SEGUNDINA DE LA CRUZ and JOSE DE LA CRUZ, alias "Pitong" hitting them in the vital parts of their bodies, thereby inflicting upon them mortal gunshot wounds, which directly caused the instantaneous death of said JORGE (GEORGE) DE LA CRUZ, SEGUNDINA DE LA CRUZ and JOSE DE LA CRUZ alias "Pitong".

CONTRARY TO LAW.

Bacolod City, Philippines, December 11, 1992.[8]

On January 19, 1993, accused-appellant Orias, along with the other accused, pleaded not guilty to the charge. After the pre-trial conference, trial on the merits ensued.

In his defense, accused-appellant Orias contends that on the night the incident took place, he was at the dance hall sponsored by his unit as he was assigned by his Detachment Commander to entertain the visitors and that he stayed there from 6:00 p.m. until the wee hours of the morning.[9]

Ruling of the Trial Court

After trial, the RTC of Himamaylan, Negros Occidental convicted Elarcosa and accused-appellant Orias, but acquitted Antonio David, Jr. The dispositive portion of the Decision reads:

WHEREFORE, based on the foregoing facts and considerations, this Court declares accused Mitsuel Elarcosa and Jerry Orias guilty beyond reasonable doubt of the offense as charged in the information and sentences them to suffer the penalty of Reclusion Perpetua. Further, both accused are ordered to indemnify the heirs of the victim the sum of One Hundred Thousand Pesos (P100,000.00); as moral damages and Forty Thousand Pesos (P40,000.00) as actual damages without subsidiary imprisonment in case of insolvency.

Accused Antonio David, Jr. is hereby acquitted on the ground of reasonable doubt.

SO ORDERED.[10]

One of the accused, Antonio David, Jr. was acquitted on the ground of reasonable doubt. The trial court justified this by stating that based on the affidavit and testimony of Rosemarie, only Elarcosa and accused-appellant Orias were positively identified. There was no mention that Antonio David, Jr. was indeed present during the incident.[11]

Aggrieved, Elarcosa and accused-appellant Orias filed an appeal with the CA. However, on June 25, 2005, Elarcosa filed an Urgent Motion to Withdraw Appeal,[12] which was granted by the CA in its Resolution[13] dated September 11, 2007.

Essentially, accused-appellant Orias contends that the decision of the RTC is erroneous because of the incredibility of the testimony of the prosecution's star witness, Rosemarie dela Cruz, and because of the physical impossibility for accused-appellant to be present at the place of the crime at the time the same was committed.[14]

Ruling of the Appellate Court

On February 28, 2008, the CA affirmed with modification the judgment of the lower court. It ruled that contrary to accused-appellant Orias' contention, the detailed testimony of Rosemarie was clear, consistent and convincing. Further, accused-appellant Orias failed to present any evidence to establish any improper motive that may have impelled Rosemarie to falsely testify against him. The CA also held that in the face of the positive identification of the accused by their very victim as the perpetrators of the crime charged, the defense of alibi must fail.[15]

The CA, however, held that accused-appellant Orias can only be convicted of three (3) counts of murder, and not of robbery with multiple homicide, since the prosecution was not able to prove that robbery was indeed committed.[16] In addition, the CA found that the killing was attended by treachery; hence, the crime committed was not multiple homicide, but multiple murder.[17]

The dispositive portion of the Decision of the CA reads:

WHEREFORE, in view of all the foregoing, December 17, 1996 Decision of the Regional Trial Court, Branch 56, Himamaylan, Negros Occidental, in Criminal Case No. 567, is hereby AFFIRMED WITH MODIFICATION. Appellant Jerry B. Orias is hereby found guilty beyond reasonable doubt of Multiple Murder and is hereby sentenced to suffer the penalty of reclusion perpetua. Appellants are further ordered to pay the heirs of the victims the amount of One Hundred Fifty Thousand Pesos (P150,000.00) as civil indemnity. The awards for moral and actual damages are DELETED for lack of factual and legal basis.

SO ORDERED.[18]

On March 25, 2008, accused-appellant Orias filed his Notice of Appeal of the Decision dated February 28, 2008 rendered by the CA.[19]

In our Resolution dated April 13, 2009, we notified the parties that they may file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. On June 8, 2009, accused-appellant Orias manifested that he would no longer file a supplemental brief and that he was merely adopting the Brief for the Accused-Appellants[20] dated September 8, 1999 as his supplemental brief. In the same vein, on July 2, 2009, the People of the Philippines manifested that it was no longer filing a supplemental brief as it believed that the Brief for Plaintiff-Appellee[21] dated January 7, 2000 had adequately addressed the issues and arguments in the instant case.

The Issues

Accused-appellant Orias contends in his Brief[22] that:

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME

CHARGED.

Our Ruling

We sustain accused-appellant's conviction.

The assessment of the credibility of a witness
is best left to the sound discretion of the trial court

In his Brief, accused-appellant Orias contends that the testimony of Rosemarie is incredible as her recollection of the incident is uncertain and is insufficient to support a finding of guilt against accused-appellant Orias.[23]

We do not agree. As found by both the RTC and the CA, the detailed testimony of Rosemarie is clear, consistent and convincing.

In this regard, it should be noted that questions concerning the credibility of a witness are best addressed to the sound discretion of the trial court, since it is the latter which is in the best position to observe the demeanor and bodily movements of a witness.[24] This becomes all the more compelling when the appellate court affirms the findings of the trial court. Thus, we generally defer to the trial court's assessment, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[25] Unfortunately, however, accused-appellant Orias failed to show any of these as to warrant a review of the findings of fact of the lower court.

Further, settled is the rule that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself.[26] Hence, the test to determine the value or credibility of the testimony of a witness is whether the same is in conformity with common knowledge and is consistent with the experience of mankind.[27]

In the instant case, Rosemarie was able to convincingly testify that she was present when accused-appellant Orias and Elarcosa shot to death her brother and her father in the living room, since during that time, she and her mother were preparing supper for accused-appellant Orias and Elarcosa in the kitchen, which was only an arm's length away from the living room. [28]

From where she was standing, Rosemarie could not have any difficulty identifying the malefactors, since she knew them beforehand and the living room was sufficiently lighted when the incident happened. As a matter of fact, Rosemarie positively and consistently identified accused-appellant Orias and Elarcosa in the police station during the police line-up, as well as in the courtroom during trial, as the persons who shot her brother and her father.[29]

Moreover, accused-appellant Orias did not present any evidence which would show that Rosemarie was driven by any improper motive in testifying against him. Pertinently, the absence of such improper motive on the part of the witness for the prosecution strongly tends to sustain the conclusion that no such improper motive exists and that her testimony is worthy of full faith and credit.[30] Indeed, there is no reason to deviate from the factual findings of the trial court.

Alibi is an inherently weak defense

Accused-appellant Orias further contends in his Brief that it was physically impossible for him to be present at the place where the crime was committed during the time it took place.[31] As mentioned above, accused-appellant Orias claims that on the night the incident occurred, he was at the dance hall sponsored by his unit, as he was assigned by his Detachment Commander to entertain the visitors and that he stayed there from 6:00 p.m. until the

wee hours of the morning.[32]

Concerning this, it bears stressing that for alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[33]

Significantly, a meticulous review of the records would reveal that accused-appellant Orias failed to present convincing evidence that he did not leave the dance hall in Barangay Amotay, Binalbagan, Negros Occidental, which incidentally is the same barangay where the crime was committed, on the evening of September 27, 1992.[34] Also, considering that the dance hall is in the same barangay where the crime was committed, it was not physically impossible for accused-appellant Orias to be present at the locus criminis at the time the same was committed.

Furthermore, it has been held, time and again, that alibi, as a defense, is inherently weak and crumbles in the light of positive identification by truthful witnesses.[35] It is evidence negative in nature and self-serving and cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence.[36] Thus, there being no strong and credible evidence adduced to overcome the testimony of Rosemarie pointing to him as one of the culprits, no weight can be given to accused-appellant Orias' alibi.

Although the alibi of accused-appellant Orias appears to have been corroborated by a CAFGU member by the name of Robert Arellano and by a vendor present during the dance, said defense is unworthy of belief not only because of its inherent weakness and the fact that accused-appellant Orias was positively identified by Rosemarie, but also because it has been held that alibi becomes more unworthy of merit where it is established mainly by the accused himself, his relatives, friends, and comrades-in-arms,[37] and not by credible persons.[38]

Robbery must be proved conclusively as the killing itself

As found by the CA, accused-appellant Orias can only be convicted of three (3) counts of murder, and not of robbery with homicide.[39]

Well-entrenched in our jurisprudence is the principle that in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proved as conclusively as any other essential element of the crime. Where the evidence does not conclusively prove the robbery, the killing of the victim would be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the crime of robbery with homicide.[40]

In the present case, the evidence is insufficient to sustain the conviction of the accused-appellant Orias for the crime of robbery with homicide. Aside from the testimony of Rosemarie that she saw accused-appellant Orias and Elarcosa search the wooden chest in their house after shooting the victims, no other evidence was presented to conclusively prove that the PhP 40,000 cash and the registration certificate of large cattle were inside the said wooden chest and that accused-appellant Orias and Elarcosa actually took them.

Remarkably, *People v. Alod Manobo*[41] is enlightening, thus:

On the nature of the crime committed, we agree with the trial court that these appellants may not be convicted of robbery with homicide, there being no adequate independent proof of the robbery. There is no sufficient evidence, outside of the confessions, that anything was stolen from the house of the victims. While there is testimony that four or five days prior to the crime Kee Kang received a large amount of money, there is nothing to prove that the money remained with him until the time the killings were committed several days later. The hiatus between the reception of the money and the delict itself was long enough for the deceased to send the money elsewhere. Nor is there evidence that anything was taken from the house or the trunks therein.

That the appellants intended, as they admitted, to rob Kee Kang does not constitute actual robbery. Without separate proof of *corpus delicti*, the extra-judicial confessions will not support conviction for robbery (Rule 133, section 3)

No robbery being proved; conviction for robbery with homicide becomes impossible (*People vs. Bamego*, 61 Phil. 318; *People vs. Panaligan*, 43 Phil. 131; *People vs. Labita*, 99 Phil. 1068).

The slaying of Kee Kang, his wife Mandoloon, and his clerk Te Chu must thus be considered as triple murder (*People vs. Barruga*, 61 Phil. 318, 351, and cases cited), qualified by treachery (which absorbs nocturnity), and aggravated by the circumstance of having been perpetrated in the dwelling of the victims. The apposite penalty would be death, but, for lack of a sufficient number of votes, the sentence is reduced to reclusion perpetua.

Considering that robbery was not conclusively proved in the instant case, accused-appellant Orias could not be convicted of robbery with homicide.

The killing of the victims is qualified by treachery

Treachery was unmistakably present in the instant case. Settled is the rule that qualifying circumstances cannot be presumed, but must be established by clear and convincing evidence as conclusively as the killing itself.[42]

It must be remembered that when accused-appellant Orias and Elarcosa went to the house of the victims demanding that supper be prepared for them, said victims did not have the slightest idea of what accused-appellant Orias and Elarcosa intended to do with them. As a matter of fact, while Segundina and Rosemarie prepared supper for accused-appellant Orias and Elarcosa, Jose and Jorge entertained them in the living room. They were just engaged in a conversation when accused-appellant Orias and Elarcosa suddenly stood up and fired their guns at Jose and Jorge. As aptly observed by the CA, "The attack although frontal was very sudden and unexpected." [43] As we held in *People v. Lacaden*: [44]

Accused-appellant's contention that treachery cannot be appreciated, on the ground that an altercation between Pinoy and Danny preceded the shooting, is of no merit. As a rule, there can be no treachery when an altercation ensued between the appellant and the victim. However, the evidence on record shows that after the altercation, accused-appellant and Pinoy went ahead in their motorbike. There may still be treachery even if, before the assault, the assailant and the victim had an altercation and a fisticuffs and, after the lapse of some time from the said altercation, the assailant attacks the unsuspecting victim without affording the latter any real chance to defend himself. In this case, a considerable amount of time had lapsed prior to the attack. We agree with the trial court's observation that there was no fight. Jay Valencia never said in his testimony that there was a fight. He did say in his sworn statement that Danny was kicked by Pinoy, which was ignored because both he (Jay) and Danny just walked away. Jay and Danny, from their actions, were keeping the peace and avoiding a fight by ignoring the taunting by Pinoy and accused-appellant. Pinoy and accused-appellant then sped off in their motorcycle. As Danny and Jay were pushing their own motorbike, they were left walking on their way home. The two victims were unaware that accused-appellant had waited somewhere along the same direction they were heading and was armed with a deadly weapon. That the victim was shot facing the appellant, as contended by the latter, does not negate treachery. The settled rule is that treachery can exist even if the attack is frontal, as long as the attack is sudden and unexpected, giving the victim no opportunity to repel it or to defend himself. What is decisive is that the execution of the attack, without the slightest provocation from an unarmed victim, made it impossible for the victim to defend himself or to retaliate. (Emphasis supplied.)

Considerably, even if the shooting was frontal in the case at bar, treachery should still be appreciated, since the victims were not in any position to defend themselves as the attack was so sudden and unexpected.

The acts of accused-appellant Orias and Elarcosa evince the existence of conspiracy

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[45] It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once this is established, each and every one of the conspirators is made criminally liable for the crime actually committed by any one of them.[46]

In the absence of direct proof, the agreement to commit a crime may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of interest.[47] It does not matter who inflicted the mortal wound, as each of the actors incurs the same criminal liability, because the act of one is the act of all. As we held in *People v. Alib*: [48]

Accused-appellants likewise argue that the trial court erred in finding conspiracy since their complicity in the crime was not sufficiently established by the prosecution. They maintain that the victim suffered only one (1) hack wound on the right side of his head and no other wound was found on his body, thereby negating their participation in the crime. The argument is bereft of merit. In a conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose or design to bring about the death of the victim. (Emphasis supplied.)

In the instant case, conspiracy is manifested by the fact that the acts of accused-appellant Orias and Elarcosa were coordinated. They were synchronized in their approach to shoot Jose and Jorge, and they were motivated by a single criminal impulse, that is, to kill the victims. Verily, conspiracy is implied when the accused persons had a common purpose and were united in its execution. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility.[49]

Accused-appellant Orias should be convicted
of three (3) counts of murder and not of the
complex crime of murder

We, however, disagree with the findings of the CA that accused-appellant Orias committed the complex crime of multiple murder. Article 48 of the Revised Penal Code, which defines the concept of complex crime, states:

ART. 48. Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000.)

In a complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law, as well as in the conscience of the offender. Hence, there is only one penalty imposed for the commission of a complex crime.[50]

Complex crime has two (2) kinds. The first is known as compound crime, or when a single act constitutes two or more grave or less grave felonies. The second is known as complex crime proper, or when an offense is a necessary means for committing the other.[51]

The case at bar does not fall under any of the two instances stated above. It is clear from the evidence on record that the three (3) crimes of murder did not result from a single act but from several individual and distinct acts. Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes.[52]

In support of its findings, the CA cited *People v. Lawas*, [53] where, on a single occasion, several Moros were killed by a group of Maranaos. However, the reliance by the CA on the afore-cited case is misplaced.

In *Lawas*, since there was no conspiracy to perpetuate the killing, collective criminal responsibility could not be

imputed upon the defendants. Thus, it was impossible to ascertain the number of persons killed by each of them. As we held in *People v. Hon. Pineda*:

The present case is to be differentiated from *People vs. Lawas*, L-7618-20, June 30, 1955. There, on a single occasion, about fifty Maranaos were killed by a group of home guards. It was held that there was only one complex crime. In that case, however, there was no conspiracy to perpetuate the killing. In the case at bar, defendants performed several acts. And the informations charge conspiracy amongst them. Needless to state, the act of one is the act of all. Not material here, therefore is the finding in *Lawas* that "it is impossible to ascertain the individual deaths caused by each and everyone" of the accused. It is to be borne in mind, at this point, that apply the first half of Article 48, heretofore quoted, there must be singularity of criminal act; singularity of criminal impulse is not written into the law.[54] (Emphasis supplied.)

In the instant case, however, the acts of accused-appellant Orias and Elarcosa demonstrate the existence of conspiracy, thereby imputing collective criminal responsibility upon them, as the act of one is the act of all. Verily, the ruling in *Lawas* that "it is impossible to ascertain the individual deaths caused by each and everyone" of the defendants does not apply here.

Considering our holding above, we rule that accused-appellant Orias is guilty, not of a complex crime of multiple murder, but of three (3) counts of murder for the death of the three (3) victims.

Since there was only one information filed against accused-appellant Orias and Elarcosa, the Court observes that there is duplicity of the offenses charged in the said information. This is a ground for a motion to quash as three (3) separate acts of murder were charged in the information. Nonetheless, the failure of accused-appellant Orias to interpose an objection on this ground constitutes waiver.[55]

Penalty imposed

Under Article 248 of the Revised Penal Code, as amended, the penalty for the crime of murder is reclusion perpetua to death. Without any mitigating or aggravating circumstance attendant in the commission of the crime, the medium penalty is the lower indivisible penalty of reclusion perpetua.[56]

In the present case, while accused-appellant Orias was charged with three aggravating circumstances in the Information, only one was proved thereby qualifying the killing to murder. Considering that no other aggravating circumstance was proved and that accused-appellant Orias is guilty of three (3) separate counts of murder, the imposable penalty shall be three (3) sentences of reclusion perpetua.

Award of damages

Based on Article 100 of the Revised Penal Code, every person criminally liable for a felony is also civilly liable. Thus, 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; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[57] In cases of murder and homicide, civil indemnity of PhP 75,000 and moral damages of PhP 50,000 are awarded automatically.[58] [Indeed, such awards are mandatory without need of allegation and proof other than the death of the victim,[59] owing to the fact of the commission of murder or homicide.[60]

We, however, additionally grant exemplary damages in the amount of PhP 30,000, in line with current jurisprudence.[61]

WHEREFORE, the appeal is DENIED. The assailed Decision of the CA in CA G.R. CEB-CR-H.C. No. 00608 is AFFIRMED with MODIFICATIONS. Accused-appellant Jerry B. Orias is found guilty beyond reasonable doubt of three (3) counts of murder and is hereby sentenced to suffer the penalty of reclusion perpetua for each count.

Accused-appellant is further ordered to pay the heirs of the victims civil indemnity of seventy five thousand pesos (P75,000.00), moral damages of fifty thousand pesos (P50,000.00), and exemplary damages of thirty thousand pesos (P30,000.00) for each count.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

[1] Rollo, p. 6.

[2] CA rollo, p. 102.

[3] Rollo, p. 6.

[4] Id.

[5] Id.

[6] CA rollo, p. 104.

[7] Rollo, p. 6.

[8] CA rollo, pp. 19-20.

[9] Id. at 109.

[10] Id. at 90-91. Penned by Acting Presiding Judge Jose Y. Aguirre, Jr.

[11] Id. at 89.

[12] Id. at 126.

[13] Id. at 128-129.

[14] Rollo, p. 8.

[15] Id. at 9-10.

[16] Id. at 10.

[17] Id. at 11-12.

[18] Id. at 13. Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Antonio L. Villamor and Florito S. Macalino.

[19] Id. at 16-17.

[20] CA rollo, pp. 63-75.

[21] Id. at 96-115.

[22] Id. at 63-75.

[23] Id. at 72.

[24] Llanto v. Alzona, G.R. No. 150730, January 31, 2005, 450 SCRA 288, 295-296.

[25] Fuentes v. Court of Appeals, G.R. No. 109849, February 26, 1997, 268 SCRA 703, 708-710.

- [26] *People v. Zinampan*, G.R. No. 126781, September 13, 2000, 340 SCRA 189, 199.
- [27] *Id.*
- [28] Rollo, p. 9.
- [29] *Id.* at 9.
- [30] *People v. Baylen*, G.R. No. 135242, April 19, 2002, 381 SCRA 395, 404.
- [31] CA rollo, pp. 72-73.
- [32] *Id.* at 109.
- [33] *People v. Guerrero*, G.R. No. 170360, March 12, 2009, 580 SCRA 666, 683; *People v. Garte*, G.R. No. 176152, November 25, 2008, 571 SCRA 570, 583.
- [34] Rollo, p. 9.
- [35] *People v. dela Cruz*, G.R. No. 175929, December 16, 2008, 574 SCRA 78, 91.
- [36] *People v. Ranin, Jr.*, G.R. No. 173023, June 25, 2008, 555 SCRA 297, 309.
- [37] *People v. Manzano*, G.R. No. 108293, September 15, 1995, 248 SCRA 239, 248.
- [38] *People v. Panganiban*, G.R. No. 97969, February 6, 1995, 241 SCRA 91, 100-101.
- [39] Rollo, p. 10.
- [40] *People v. Cadevida*, G.R. No. 94528, March 1, 1993, 219 SCRA 218, 228; citing *People v. Pacala*, No. L-26647, August 15, 1974, 58 SCRA 370.
- [41] No. L-19798, September 20, 1966, 18 SCRA 30, 41.
- [42] *People v. Discalsota*, G.R. No. 136892, April 11, 2002, 380 SCRA 583, 592; citing *People v. Tabones*, G.R. No. 129695, March 17, 1999, 304 SCRA 781.
- [43] Rollo, p. 12.
- [44] G.R. No. 187682, November 25, 2009.
- [45] Revised Penal Code, Art. 8.
- [46] Dissenting Opinion of Justice Ynares-Santiago in *People v. Agsalog*, G.R. No. 141087, March 31, 2004, 426 SCRA 624, 644.
- [47] *People v. Perez*, G.R. No. 179154, July 31, 2009.
- [48] G.R. No. 130944, January 18, 2000, 322 SCRA 93, 101.
- [49] Dissenting Opinion of Justice Ynares-Santiago in *People v. Agsalog*, *supra* note 46.
- [50] *People v. Gaffud, Jr.*, G.R. No. 168050, September 19, 2008, 566 SCRA 76, 88.
- [51] *Id.*
- [52] *Id.*; citing *People v. Hon. Pineda*, No. L-26222, July 21, 1967, 20 SCRA 748.
- [53] 97 Phil. 975 (1955).

[54] *People v. Hon. Pineda*, supra note 52, at 753-754.

[55] *People v. Tabio*, G.R. No. 179477, February 6, 2008, 544 SCRA 156, 162. See also *United States vs. Balaba*, 37 Phil. 260 (1917).

[56] *People v. Valdez*, G.R. No. 127663, March 11, 1999, 304 SCRA 611, 629.

[57] *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 699.

[58] *People v. Ocampo*, G.R. No. 177753, September 25, 2009, 601 SCRA 58, 73; *People v. Amodia*, G.R. No. 173791, April 7, 2009, 584 SCRA 518, 545.

[59] *People v. Bajar*, G.R. No. 143817, October 27, 2003, 414 SCRA 494, 510.

[60] *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 303.

[61] *People v. Ofemiano*, G.R. No. 187155, February 1, 2010; citing *People v. Pabol*, G.R. No. 187084, October 12, 2009, 603 SCRA 522, 532-533.

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