

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMAN LACADEN Y PARINAS, ACCUSED-APPELLANT.

G.R. No. 187682. November 25, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For Review under Rule 45 of the Revised Rules of Court is the Decision[1] dated 30 September 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02848, entitled, *People of the Philippines v. Roman Lacaden y Parinas* affirming the Decision[2] rendered by the Regional Trial Court (RTC), Second Judicial Region, Branch 21, Santiago City in Criminal Case No. 21-4985 for Murder and in Criminal Case No. 21-4986 for Frustrated Murder, convicting Roman Lacaden y Parinas (accused-appellant) guilty beyond reasonable doubt of committing the crime of Murder against victim Danny Valencia (Danny) and for Attempted Murder against victim Jay Valencia (Jay).

On 16 August 2004, the First Assistant City Prosecutor of Santiago City, Isabela, filed two separate Informations against accused-appellant charging him with Murder and Frustrated Murder before the RTC of Santiago City. The cases were docketed as Criminal Case No. 4985 (Murder) and Criminal Case No. 4986 (Frustrated Murder) and raffled off to Branch 21. The accusatory portion of the two Informations read:

Criminal Case No. 21-4985

That on or about May 18, 2005 at Balintocatoc, Santiago City, Philippines, and within the jurisdiction of the this Honorable Court, the above-named accused, armed with a handgun but not having been issued a license thereof, with malice afterthought and with deliberate intent to take the life of DANNY VALENCIA, did then and there, willfully, unlawfully and feloniously, and treacherously shoot therewith said DANNY VALENCIA thereby causing the direct and instantaneous death of said DANNY VALENCIA.

All contrary to law with the generic aggravating circumstance of nocturnity.[3]

Criminal Case No. 21-4986

That on or about May 18, 2005 at Balintocatoc, Santiago City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a handgun but not having been issued a license thereof (sic) and with evident premeditation and treachery did then and there willfully, unlawfully and feloniously shoot and hit one Jay Valencia, who as a result thereof, suffered GSW, PO ENTRY 4[th] ICS LEFT PARASTERNAL AREA, PO EXIT; 5[th] RIB LEFT AREA, thus performing all the acts of execution which would have produce (sic) the crime of Murder as a consequence but nevertheless did not produce it by reason of causes independent of his will, that the said JAY VALENCIA was able to run away from the accused and because the timely medical assistance rendered unto the said JAY VALENCIA which prevented his death.

All contrary to law with the generic aggravating circumstance of nocturnity.[4]

On arraignment, accused-appellant, who was assisted by counsel, entered "NOT GUILTY" pleas to the charges. In a joint pre-trial conference conducted on 20 January 2006, the following facts were stipulated:

- Accused was arrested in the afternoon of 19 May 2005 at the Royal Eagle Station in Santiago City;
- The existence of Post Mortem Autopsy Report of Dr. Romanchito Bayong; and
- Deceased Danny Valencia was treated at the Southern Isabela Cathedral Hospital by Dr. Mabbayad.

The two cases were tried jointly.

The prosecution presented two witnesses: (a) the victim Jay Valencia; and (b) Eleonor Valencia, the widow of the deceased victim Danny Valencia. The witnesses for the defense were the following: (a) accused-appellant Roman Lacaden; and (b) his sister Cristina Lapiceros (Cristina).

From the records of the two cases, the following version of the prosecution is culled:

On the evening of 18 May 2005, Jay Valencia and Danny Valencia were at the community center in Bannawag Norte, Santiago City, Isabela. On their way home to Balintocatoc, they rode on a motorbike driven by Danny with Jay as the back rider. Upon reaching Malasin, their motorbike ran out of gas, so they alighted and walked while pushing their motorbike. As they were continuing their trip home, accused-appellant Roman Lacaden and his cousin Pinoy Lacaden, who were also riding a motorcycle, came along and asked them if they stole the motorcycle they were pushing. The two replied in the negative and told accused-appellant that the motorbike was owned by Danny Valencia. Jay and Danny continued walking home while accused-appellant and his cousin went ahead and overtook them.

The trip remained uneventful until after some time, when Jay and Danny were caught by surprise when accused-appellant suddenly emerged in the middle of the road near the banana plantation and shot them. Jay was the first one hit on the chest by a bullet shot from accused-appellant's pistol. As Jay was trying to escape, he saw accused-appellant shoot his cousin Danny. Danny fell to the ground and died on the spot. Jay was able to run home and seek help from his father, and was taken to the hospital for immediate medical assistance. He survived.

In the Post Mortem Autopsy Report^[5] released by the City Health Office of Santiago on 19 May 2005, the stated cause of death of Danny was Intracranial Hemorrhage/Bleeding Secondary to Gun Shooting.

Eleanor Valencia, the wife of deceased victim Danny, was presented in court to testify on the actual damages. She presented receipts showing funeral expenses.

For its part, the defense narrates its version of the incident as follows:

Accused-appellant denied authorship of the killing of the victim. He accused Pinoy's father of conniving with the barangay chairman in implicating him as the killer. The barangay chairman was apparently harboring ill feelings toward Pinoys' family.

At around 9:00 o'clock in the evening of 18 May 2005, accused-appellant Roman Lacaden and Pinoy Lacaden were at a birthday party in Malasin. By 9:30 o'clock in the evening, the two decided to go home. Riding a motorcycle on their way home, they passed by Jay Valencia and a companion who were then pushing a motorbike. On seeing that they were pushing the motorbike, Pinoy inquired why they were pushing it, to which the two men replied that the motorbike was out of gas. It was then that Pinoy commented in the Ilocano dialect, "Okinnayo baka tinakaw yo met" (vulva of your mother, maybe you stole it). Angered by Pinoy's comment, Jay's companion retorted, "Ukinnayo met, agtatakaw kayo met" (vulva of your mother also, you are also thieves). Pinoy alighted from the motorcycle and kicked Jay's companion several times. The latter retaliated. While the two men were engaged in a brawl, accused-appellant and Jay Valencia were attempting to pacify them. When the two men were pacified, accused-appellant found out the name of Jay's companion as one Danny Valencia residing in the same barangay. Immediately thereafter, they proceeded home, with accused-appellant driving the motorcycle.

Nearing the outpost, Pinoy alighted from the motorcycle. Accused-appellant then went to the house of his sister. At around 9:30 o'clock in the evening, Pinoy arrived and said to accused-appellant, "napatay ko sila." Pinoy then handed to accused-appellant the .38 caliber gun he used in shooting the victims. Inquiring as to whom Pinoy had killed, the latter answered that he killed the Valencias. Noticing the anxious look on Pinoy's face, accused-appellant took him to the poultry area where Pinoy's father was. Accused-appellant then handed the gun over to Pinoy's father and said that Pinoy killed someone. Pinoy's father became angry at accused-appellant, saying that the incident would not have occurred if accused-appellant had not taken Pinoy with him. Pinoy's father warned them of the possibility of being jailed, considering that accused-appellant was an ex-convict. He then advised the two to go to Manila and hide as he tried to settle the case.

Because there was no longer any transportation available at that time, accused-appellant spent the night at the house of his sister. The next day, or on 19 May 2005, accused-appellant went to the Royal Eagle Bus terminal in order to leave for Manila, but he was arrested by the police.

The defense thereafter presented accused-appellant's sister Cristina Lapiceros to testify that he stayed at her house the evening of 18 May 2005. The witness, however, said she was already sleeping at around 9:30 o'clock in the evening. According to her, her brother did not go to her house that night.

Pinoy did not testify on the witness stand.

On 23 March 2007, the RTC rendered a Joint Decision convicting accused-appellant of Murder in Criminal Case No. 21-4985 and of Attempted Murder in Criminal Case No. 21-4986, disposing as follows:

WHEREFORE, in the light of the foregoing considerations the Court finds the accused Roman Lacaden y Parinas GUILTY beyond reasonable doubt of murder in Crim. Case No. 21-4985 and hereby sentences him to the penalty of reclusion perpetua. He is also ORDERED to pay the heirs of the deceased Danny Lacaden the sums of P22,360.00 as actual damages, P75,000.00 as death indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

In Crim. Case No. 21-4986, the Court also finds the accused Roman Lacaden y Parinas GUILTY beyond reasonable doubt of attempted murder and hereby sentences him to an indeterminate penalty of six (6) months of arresto mayor as minimum to four (4) years of prision correccional, as maximum. He is also ORDERED to pay the offended party Jay Valencia the sum of P10,000.00 as moral damages.[6]

The RTC accorded full faith and credence to the testimonies of the prosecution witnesses. It held that the defense of denial and alibi cannot prevail over the positive identification of Jay that accused-appellant was the assailant. Ruling that the qualifying circumstance of treachery was present, the trial court found that the means of execution employed by accused-appellant was deliberately or consciously adopted by them and did not give the victims any opportunity to defend themselves against the attack. It was not proven that the firearm used was unlicensed. The trial court also did not discuss the allegation of the generic aggravating circumstance of nocturnity.

Via Notice of Appeal, accused-appellant appealed the RTC ruling with the Court of Appeals, where the case was docketed as CA-GR HC No. 02848.

The Court of Appeals was convinced that the trial court correctly found that the prosecution discharged the quantum of evidence needed to prove the guilt of accused-appellant. By its Decision promulgated on 30 September 2008, the Court of Appeals concurred in the factual findings of the trial court, and affirmed the conviction of accused-appellant for Murder and Attempted Murder, decreeing:

In fine, taking into consideration the factual and legal circumstances of this case, We are convinced that all the elements of murder and attempted murder are present in the case at bar and the Appellant's guilt was aptly

proven by the prosecution beyond an iota of doubt.

WHEREFORE, premises considered, herein appeal is hereby DENIED for evident lack of merit. The challenged Decision, supra, is AFFIRMED in toto.[7]

This case is now with us in view of the Notice of Appeal interposed by accused-appellant from the Court of Appeals Decision.

In its Resolution of 20 July 2009, the Court accepted the appeal and required the parties to submit their supplemental briefs, if they so desire. The parties waived the filing of supplemental briefs and adopted the Briefs earlier filed with the Court of Appeals.

Accused-appellant prays for his acquittal and the reversal of the judgment of conviction in the two criminal cases, on the following assignment of errors:

I.

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

II.

ASSUMING ARGUENDO THAT THE ACCUSED-APPELLANT IS CULPABLE, THE TRIAL COURT GRAVELY ERRED IN APPRECIATING TREACHERY AS QUALIFYING CIRCUMSTANCE IN CRIMINAL CASE NO. 21-4985.

The appeal fails.

Accused-appellant attacks the trial court's verdict convicting him of Murder and Attempted Murder, claiming that the prosecution failed to discharge its function of proving his guilt beyond reasonable doubt. The defense argues that the eyewitness Jay could not have possibly seen who shot Danny, because Jay was about four meters away from where the assailant was. Because of the distance, it was possible that Jay mistook the gun-wielding man for accused-appellant when it could have also been Pinoy. In a nutshell, the defense raises the issue of reasonable doubt. It also questions the trial court's appreciation of the qualifying circumstance of treachery on the contention that there is no treachery when the attack is preceded by an argument or altercation.

The issues raised by accused-appellant hinge on the credibility of the prosecution witnesses.

The age-old rule is that the task of assigning values to the testimonies of witnesses on the witness stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is thus no surprise that findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify.[8]

As borne out by the records of this case, the RTC did not err in giving credence to the testimonies of the prosecution witnesses, particularly of Jay, who was an eyewitness to the crime and was himself a victim of the shooting. There is neither any showing of a fact of substance or value which has been overlooked and, if considered, might affect the result of the case.

Jay's testimony does not suffer from any serious and material inconsistency that could possibly detract from his credibility. Accused-appellant was directly identified by Jay as the perpetrator of the two crimes. Not only was accused-appellant shown to have been at the scene of the crime, but as the one who shot Jay, and as the one who

shot and killed the latter's cousin Danny.[9] Jay saw the shooting of Danny, and was categorical and frank in his testimony. From his direct and straightforward testimony, there is no doubt as to the identity of the culprit, (accused-appellant) who suddenly emerged in the middle of the road near the banana plantation at Balintocatoc, Santiago City, Isabela, and shot Jay on the chest, and thereafter shot the now deceased Danny. As confirmed by Jay on the witness stand:

A:

Roman Lacaden shot me, sir.

Q:

Will you tell us the circumstances on how you were shot by Lacaden?

A:

When we came from Bannawag, the driver is Danny Valencia and I am his back rider, when we reached Malasin, sir, our gasoline was consumed. Since we have no gasoline I pushed the motorcycle while Danny Valencia is walking until we reached Balintocatoc, sir.

Q:

When you reached Balintocatoc what, if anything, happened?

A:

Roman Lacaden followed and accosted us, sir.

Q:

You said that the accused was following you, was the accused on board any transportation?

A:

Yes, sir, there was.

Q:

What kind of transportation was he riding on?

A:

Motorcycle, sir.

Q:

You said Lacaden was following you with a motorcycle, was he alone or did he have a companion?

A:

There was, sir.

Q:

So there were two of them is that what you mean?

A:

Yes, sir.

Q:

Now, you said he accosted you, will you tell us how Lacaden accosted you?

A:

He accosted us by telling us that we stole the motorcycle, sir.

Q:

And what, if anything, did you or your companion tell him?

A:

We told him that we did not steal the motorcycle because it is owned by Danny Valencia, sir.

Q:

You are referring to your companion Danny Valencia?

A:

Yes, sir.

Q:

After telling Lacaden that the motorcycle that your rode (sic) on is owned by Danny Valencia, what happened next?

A:

We left them and we proceeded to Balintocatoc and then they followed, sir.

Q:

What happened when they are (sic) following you when you were proceeding towards Balintocatoc?

A:

They overtook us, sir, and they went ahead of us.

Q:

You said that the accused Lacaden riding on a motorcycle with a companion overtook you. What happened when they overtook you towards Balintocatoc?

A:

When we already reached the Iglesia Ni Cristo near the banana plantation a man came out and met us and there he shoot (sic) us, sir.

Q:

Did you recognize that person who met you along the road?

A:

Yes, sir.

Q:

Who was that person who met you and shot you?

A:

Roman Lacaden, sir.

Q:

You mentioned Roman Lacaden who shot you, if he is in Court, can you point him to us?

A:

Yes, sir. He is that one. (Witness stood up and pointed to a man inside the Courtroom and that man pointed to stood up and when asked he gave his name as Roman Lacaden.)

Q:

Will you tell us the circumstances on how Lacaden while standing at the middle of the road fired shots towards you and Danny Valencia?

A:

I was the first who was shot and when I fell he shoot (sic) Danny Valencia, sir.

Q:

By the way when the initial firing occurred how far were you from the accused Lacaden?

A:

Quite far, sir, maybe from here to that chair. (Witness pointed to a distance which is about four (4) meters).

Q:

You said when you were shot by Lacaden you fled and he shot your companion Danny Valencia, what happened to Danny Valencia?

A:

He died, sir.

Q:

You were by (sic) bullet coming from Lacaden, where were you hit Mr. Witness?

A:

On my chest, sir.

Q:

You said that when you were shot on the chest you fled, towards what direction did you flee?

A:

Going west, sir.

Q:

Now, where did you go while fleeing towards the west?

A:

I went home, sir, to ask for help.

Q:

And to whom did you ask for help in your house?

A:

From my father, sir.[10]

Upon reaching home, Jay was able to seek aid from his father. After telling his father that they were shot, Jay then told him that it was accused-appellant who shot them, thus:

Q:

What did you tell your father?

A:

I told him that we were shot, sir.

Q:

What else did you tell your father?

A:

I told him that it was Roman Lacaden who shot us, sir.

Q:

And what did your father do when you sought help from him when you told him that Lacaden shot you and your companion?

A:

He went out and went to see my companion, sir.

Q:

Was he alone in going towards the place where your companion was?

A:

He fetched my cousin, sir.

Q:

How about you?

A:

I was left in our house and then my uncle arrived, sir.

Q:

And what happened when your uncle came?

A:

He called for me and we went to the place where Danny Valencia was and then they brought us to the hospital, sir.

Q:

When you reached the place where you were shot by the accused Lacaden, did you see your companion?

A:

Yes, sir.

Q:

And what did you see of Danny Valencia?

A:

He was lying down on the ground, sir.

Q:

Do you know what happened to him?

COURT:

He said already that he died.[11]

On cross-examination, Jay testified:

Q:

Were they the both persons who shot you Mr. Witness?

A:

I only saw one person who shot us, sir.

Q:

And who could that be Mr. Witness?

A:

It was Roman Lacaden, sir.

Q:

And how could you be sure that it was Roman and not Pinoy who shot you?

A:

Because the color of the t-shirt of the person who shot us has the same color of that of Roman Lacaden when he confronted us, sir.

Q:

So what was the color of the dress of that person who shot you Mr. Witness?

A:

Black pants and black t-shirt with prints, sir.

Q:

What about Pinoy, what was the color of his dress at that time?

A:

I think it is like yellow, sir.[12]

Accused-appellant claims that the attack on the victim was not a product of deliberate intent. There was no treachery, since the shooting was preceded by a quarrel and a scuffle between Pinoy and the deceased Danny.

The argument does not persuade.

Treachery qualifies the killing to murder.[13] There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make.[14]

The elements of treachery are: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted.[15]

A review of the evidence on record established these elements. On the evening of 18 May 2005, Jay and Danny were walking home pushing their motorbike with an empty fuel tank, unarmed and unaware of the danger hiding behind the thick shrubs in the banana plantation. All of a sudden, accused-appellant, coming from the middle of the field, launched his attack, shooting at his victims with a .38 caliber pistol. Jay was hit on the chest, but was able to run for his life and seek help. Had he not sought medical attention, he would have bled to death. When Jay was about four meters away, he saw accused-appellant shoot Danny, who fell on the ground and died.

Clearly, the manner of attack employed by accused-appellant on the two victims was deliberate and unexpected. There was no opportunity for Jay and Danny to defend themselves. Accused-appellant surreptitiously and unexpectedly emerged from the fields and came out in the middle of the road, armed with a .38 caliber gun and shot his two victims. The suddenness of the attack by accused-appellant, and without any provocation on the part of Danny, who was on his way home with his cousin Jay, and the fact that they were unarmed, left them with no option but to run for their lives. This is the essence of treachery -- a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. In treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate.[16] Accused-appellant consciously and deliberately adopted his mode of attack, making sure that Jay and the deceased Danny would have no chance to defend themselves by reason of the surprise attack. Danny died on the spot. The Post-Mortem Autopsy Report reveals that he was shot twice, once in the mouth, and once in the back.

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.[17] 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.

With respect to the crime committed against Jay, accused-appellant is charged with Frustrated Murder. For failure of the prosecution to present the testimony of the doctor who treated him to testify regarding the nature of the injury sustained by the latter, the Court cannot determine whether the injury would have produced death if not for the timely medical attention. However, accused-appellant is responsible for committing Attempted Murder.

Having commenced the criminal act by overt acts but failing to perform all acts of execution as to produce the felony by reason of some cause other than his own desistance, accused-appellant committed an attempted felony.[18] Accused-appellant commenced his attack with a manifest intent to kill by shooting Jay, but failed to perform all the acts of execution by reason of causes independent of the former's will, that is, poor aim and the swiftness of the latter in escaping. The bullet wound inflicted on Jay's chest was not sufficient to cause his death. The settled rule is that where the wound inflicted on the victim is not sufficient to cause his death, the crime is only attempted murder, since the accused did not perform all the acts of execution that would have brought about death.[19]

The twin defenses of denial and alibi raised by accused-appellant must fail in light of the positive identification made by one of his victims, Jay. Alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused.[20] It is only axiomatic that positive testimony prevails over negative testimony.[21] Accused-appellant and his two victims reside in the same barangay and are therefore familiar with one another. Thus, Jay could not have been mistaken on accused-appellant's identity. For alibi to prosper, it must be established by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that accused was somewhere else.[22] Accused-appellant's alibi that he was at his sister's house at the time of the shooting, and that his cousin Pinoy later went to him and told him that he had shot the Valencias was disproved by Cristina, accused-appellant's sister and witness. Cristina testified that her brother, accused-appellant, did not visit her on the night of the incident. Moreover, where the defense of denial remains unsubstantiated by clear and convincing evidence, it becomes negative and self-serving, and must not be given more evidentiary value vis-à-vis the affirmative testimony of a credible witness.[23]

Finally, the defense failed to show any ill motive on the part of the prosecution's witnesses to discredit their testimonies. Absent any reason or motive for a prosecution witness to perjure, the logical conclusion is that no such motive exists, and his testimony is thus worthy of full faith and credit.[24]

With respect to the appropriate penalty, the prosecution successfully established the presence of the qualifying circumstance of treachery in the killing of Danny Valencia. The presence of treachery qualified the killing to Murder in accordance with Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659. The penalty for Murder is reclusion perpetua to death. Although alleged in the information, the aggravating circumstances of use of an unlicensed firearm and nocturnity were not proven during trial. There being no aggravating or mitigating circumstance, the penalty to be imposed, as properly applied by the trial court, is reclusion perpetua.

As to damages, when death occurs due to a crime, the following may be recovered: (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.[25]

We, however, reduce the P75,000.00 civil indemnity ex delicto awarded by the RTC to P50,000.00.[26] As to actual damages, the widow of the deceased presented a list of expenses. The only official receipts that may be considered are the ones issued by Carbonel Funeral Homes (P15,000.00) and Isidro Meat Dealer (P7,360.00) totaling P22,360.00. However, we have held that when actual damages proven by receipts amount to less than P25,000.00, the award of temperate damages amounting to P25,000.00 is justified in lieu of actual damages for a lesser amount.[27] This is based on the sound reasoning that it would be anomalous and unfair to the victim who tried but succeeded in proving actual damages of less than P25,000.00. He would be in a worse situation than another who might have presented no receipts at all, but is entitled to P25,000.00 temperate damages. Thus, considering that funeral expenses in the amount of P22,360.00 were proven by Danny's heirs, an award of P25,000.00 as temperate damages, in lieu of this lesser amount of actual damages, is proper. The widow is also entitled to P50,000.00 moral damages, in view of the violent death of the victim, which does not require allegation and proof of the emotional suffering of the heirs.[28] With the finding of the qualifying circumstance of treachery, exemplary damages in the amount of P30,000.00 is properly awarded.[29]

In Criminal Case No. 21-4986, where accused-appellant was found guilty only of Attempted Murder, the RTC sentenced him to six (6) months of arresto mayor, as minimum, to four (4) years of prision correccional, as maximum. This is erroneous. Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, the penalty for murder is reclusion perpetua to death. Considering the accused-appellant is only guilty of attempted murder, the penalty should be lowered by two degrees, following Article 51 of the Revised Penal Code. Under paragraph 2 of Article 61, in relation to Article 71 of the Revised Penal Code, the penalty two degrees lower is prision mayor. In the absence of any modifying circumstance in the commission of the crime, other than the qualifying circumstance of treachery, the maximum of the indeterminate penalty shall be taken from the medium period of prision mayor, which has a range of from eight (8) years and one (1) day to ten (10) years. To determine the minimum of the indeterminate penalty, the penalty of prision mayor should be reduced by one degree, prision correccional, which has a range of six (6) months and one (1) day to six (6) years.[30]

Applying the foregoing, accused-appellant should be sentenced to suffer an indeterminate penalty of from six (6) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum. As correctly awarded by the trial court, the offended party is entitled to the sum of P10,000.00 as moral damages.

WHEREFORE, premises considered, the Court of Appeals Decision dated 30 September 2008 in CA-G.R. CR-HC No. 02848, affirming the Decision promulgated by the Regional Trial Court of Santiago City, Isabela, Branch 21, in Criminal Case No. 21-4985 (Murder) and Criminal Case No. 21-4986 (Frustrated Murder), finding accused-appellant Roman Lacaden y Parinas guilty beyond reasonable doubt of Murder and Attempted Murder, is hereby **AFFIRMED** with **MODIFICATION** as follows:

In **CRIMINAL CASE NO. 21-4985**, where the conviction of accused-appellant for Murder is **AFFIRMED** -

- (1) The award of civil indemnity is reduced to P50,000.00;
- (2) Temperate damages in the amount of P25,000.00 is awarded in lieu of actual damages;
- (3) Exemplary damages is increased to P30,000.00;
- (4) Accused-appellant's conviction sentencing him of reclusion perpetua is upheld. Moral damages in the amount of P50,000.00 is retained.

In CRIMINAL CASE NO. 21-4986, the conviction of accused-appellant for Attempted Murder is AFFIRMED. While we affirm his conviction, we increase the penalty imposed on him; and accused-appellant is hereby sentenced to suffer the indeterminate penalty of from six (6) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum. The amount of P10,000.00 as moral damages is sustained.

In the service of his sentence, accused-appellant, who is a detention prisoner, shall be credited with the entire period during which he has undergone preventive imprisonment. No costs.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Nachura, and Bersamin,[*]JJ., concur.

[*] Associate Justice Lucas P. Bersamin was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 10 June 2009.

[1] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Jose C. Reyes, Jr. and Fernanda Lampas Peralta concurring; rollo, pp. 2-22.

[2] Penned by Judge Fe Albano Madrid; CA rollo, pp. 13-19.

[3] Criminal Case No. 21-4985; records, p. 1.

[4] Criminal Case No. 21-4986; records, p. 1.

[5] Criminal Case No. 2-4985, p. 7.

[6] CA rollo, p. 19.

[7] Rollo, p. 21.

[8] *People v. Malolot*, G.R. No. 174063, 14 August 2008, 548 SCRA 676, 688.

[9] TSN, 8 June 2006, p. 5.

[10] TSN, 8 June 2006, pp. 5-9.

[11] *Id.* at 9-11.

[12] TSN, 5 July 2006, p. 8.

[13] *People v. Ramos*, 471 Phil. 115, 125 (2004).

[14] *People v. Dela Cruz*, G.R. No. 174371, 11 December 2008, 573 SCRA 708, 721; *People v. Bohol*, G.R. No. 178198, 10 December 2008, 573 SCRA 557, 567.

[15] *People v. Dela Cruz*, *id.*

[16] *People v. Tolentino*, G.R. 176385, 26 February 2008, 546 SCRA 671, 697.

[17] *People v. Montemayor*, 452 Phil. 283, 304-305 (2003).

[18] Article 6, Revised Penal Code.

[19] *People v. Valledor*, 433 Phil. 158, 171 (2002).

[20] *People v. Torres*, G.R. No. 176262, 11 September 2007, 532 SCRA 655, 665.

[21] *People v. Corpuz*, G.R. No. 168101, 13 February 2006, 482 SCRA 436.

[22] *People v. Manchu*, G.R. No. 181901, 28 November 2008, 572 SCRA 753, 763.

[23] *People v. Dionisio*, G.R. No. 130170, 29 January 2002, 425 Phil. 616, 375 SCRA 56.

[24] *People v. Dela Cruz*, *supra* note 14.

[25] *People v. Tolentino*, *supra* note 16, citing *People v. Tubongbanua*, G.R. No. 169077, 31 August 2006, 500 SCRA 659.

[26] The amount of P75,000.00 as civil indemnity is only warranted in instances where the penalty imposable is the death penalty, but reduced to reclusion perpetua with the enactment of Republic Act No. 9346 prohibiting the imposition of the death penalty. (*People v. Muñoz*, 451 Phil. 264, 274 [2003].)

[27] *Mahawan v. People*, G.R. No. 176609, 18 December 2008, 574 SCRA 755, 756.

[28] *People v. Bohol*, *supra* note 14.

[29] *People v. Gidoc*, G.R. No. 185162, 24 April 2009.

[30] *Rivera v. People*, G.R. No. 166326, 27 January 2006, 480 SCRA 188, 200.

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