

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE PEPITO D. COMBATE A.K.A. "PEPING," ACCUSED-APPELLANT.

G.R. No. 189301. December 15, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal from the January 30, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB CR-H.C. No. 00294 entitled *People of the Philippines v. Jose Pepito D. Combante a.k.a. "Peping,"* which affirmed with modification the July 2, 2003 Decision[2] in Criminal Case Nos. 95-17070 & 95-17071 of the Regional Trial Court (RTC), Branch 50 in Bacolod City.

Accused-appellant Jose Pepito D. Combate stands convicted of the crime of Murder and Homicide, as defined and penalized under Articles 248 and 249 of the Revised Penal Code (RPC), respectively. He was sentenced to suffer the penalties of reclusion temporal and reclusion perpetua.

The Facts

The charge against accused-appellant stemmed from two Informations:

Criminal Case No. 95-17070

That on or about 16[th] day of March, 1995, in the Municipality of Murcia, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a firearm, with treachery, with intent to kill and taking advantage of nighttime, did then and there, willfully, unlawfully and feloniously attack, assault and shoot on EDMUND PRAYCO y OSABEL, thereby inflicting gunshot wounds upon the body of the latter which caused the death of the said victim.

Contrary to law.[3]

Criminal Case No. 95-17071

That on or about 16[th] day of March, 1995, in the Municipality of Murcia, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a firearm, with treachery, with intent to kill and taking advantage of nighttime, did then and there, willfully, unlawfully and feloniously attack, assault and shoot on LEOPOLDO GUIRO, JR. y PEREZ alias "Nene" thereby inflicting gunshot wounds upon the body of the latter which caused the death of the said victim.

Contrary to law.[4]

On November 28, 2001, the trial court ordered the consolidation of the two cases. When arraigned with assistance of counsel, accused-appellant pleaded "not guilty" to both charges. Thereafter, a joint trial ensued.

During the trial, the prosecution offered the testimonies of Shenette Guiro, the wife of the deceased victim Leopoldo Guiro; Jose Tomaro; Rebecca Montino Apdo; Senior Police Officer 1 (SPO1) Rolando Salamisán; Inspector Jose Labuyo; Police Inspector William Senoron; PO1 Rommel Pregil; Dr. Jimmy Nadal; and Dr. Emmanuel Bando. On the other hand, the defense presented as its witnesses Magno Montinola and accused-appellant.

The Prosecution's Version of Facts

On March 16, 1995, at around 9 o'clock in the evening, Tomaro parked his passenger jeepney at the garage of Leopoldo's mother, Patria Guiro, located at Purok 2, Barangay Minoyan in Murcia, Negros Occidental. He then proceeded to the house of Leopoldo where he usually sleeps after driving the jeepney owned by Leopoldo's parents.

Upon entering the gate, Tomaro met Leopoldo and Edmund Prayco, who were on their way out. Leopoldo invited him to join them in drinking liquor but he declined saying he was already tired. He continued on his way and was about to ascend the stairs when he heard a gunshot. He rushed back to the road and there he saw accused-appellant pointing a gun at the fallen Leopoldo. When Edmund was about to intervene, accused-appellant also shot Edmund at a very close range. After shooting Edmund, accused-appellant turned his attention back to Leopoldo and shot him for a second time.

Tomaro then rushed to help Leopoldo and pleaded for his life. Instead of heeding his plea, accused-appellant pointed his gun towards Tomaro and pulled the trigger but the gun did not fire. At that instant, Tomaro jumped on accused-appellant and was able to grab the gun. Tomaro tried to shoot accused-appellant but the gun still did not fire. Hastily, accused-appellant fled to the direction of Bacolod City.

Leopoldo and Edmund were later brought to the Bacolod Sanitarium and Hospital. Edmund was declared dead on arrival, while Leopoldo died the following day.

Version of the Defense

Accused-appellant's defense, on the other hand, was confined to a denial, to wit:

In the evening of March 16, 1995, accused-appellant was in his house drinking liquor when Montinola, a close friend, arrived to fetch him. He was told to report to the barangay hall and to render duty as a tanod. Before leaving, Montinola also partook of a small quantity of liquor.

On their way to the barangay hall, they passed by the house of Leopoldo, who was drinking liquor by the side of the street fronting his house, along with Tomaro, Edmund, and someone else who accused-appellant could not identify. He and Montinola were walking on the left side of the street going towards the direction of the Mambucal Resort, while Leopoldo and his group were on the right side. Accused-appellant then extended a greeting to Leopoldo, who responded with a sarcastic remark. Accused-appellant and Montinola ignored the rudeness thrown their way and just continued walking.

They, however, soon noticed Leopoldo crossing the street and started to follow them. Edmund likewise also followed them but on the other side of the street. Suddenly, accused-appellant saw Leopoldo pull something out from his waist. He then heard a gunshot and saw Leopoldo fall to the ground. He pushed Montinola aside and they ran away.

After a few moments, he heard more gunshots coming from the direction of where Leopoldo and his group were situated. He was stricken with fear so he went home. Later, he learned that he was the suspect in the killing of Leopoldo and Edmundo. Thus, to avoid trouble, he fled to Victorias City, Negros Occidental where he was

arrested by the Murcia police on October 13, 2001.

The story of accused-appellant was corroborated by Montinola.

Ruling of the Trial Court

After trial, the RTC convicted accused-appellant. The dispositive portion of its July 2, 2003 Decision reads:

FOR ALL THE FOREGOING, judgment is hereby rendered finding the accused Jose Combate, Jr. y Dallarte alias Peping, GUILTY beyond reasonable doubt of the crime of HOMICIDE in Criminal Case NO. 95-17071 as Principal thereof. There being no modifying circumstances, the accused is sentenced to suffer the penalty of RECLUSION TEMPORAL in its medium period. Applying the Indeterminate Sentence Law, the accused shall serve a prison term of Eight (8) Years and One (1) Day of Prison Mayor to Fifteen (15) years of Reclusion Temporal.

By way of civil liability, the accused is condemned to pay the heirs of the late Leopoldo Guiro the following:

- The sum of P50,000.00 as death indemnity.
- The sum of P932,712.00 as compensatory damages and;
- The sum of P56,319.59 as reimbursement for the burial expenses.

In addition, the accused is ordered to pay Shenette Guiro the sum of P50,000.00 as moral damages.

The accused is also declared GUILTY of MURDER for the death of Edmund Prayco as charged in the Information in Criminal Case No. 95-17070 as Principal thereof. There being no modifying circumstances, the accused is sentenced to suffer the penalty of RECLUSION PERPETUA. He is condemned to pay the heirs of the late Edmund Prayco the sum of P50,000.00 as death indemnity and the sum of P30,000.00 as compensatory damages.[5]

Ruling of the Appellate Court

On January 30, 2008, the CA affirmed the judgment of the lower court and modified the award of damages. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the Decision of the Regional Trial court, Branch 50 of Bacolod City dated 2 July 200[3] is AFFIRMED WITH MODIFICATIONS. The award of compensatory damages in both cases is deleted, and in lieu thereof, exemplary damages of P25,000.00 is awarded to the heirs of Leopoldo Guiro and another P25,000.00 to the heirs of Edmund Prayco. In all other respects, the assailed decision is affirmed.

SO ORDERED.[6]

The Issue

Hence, this appeal is before us, with accused-appellant maintaining that the trial court erred in convicting him of the crimes of homicide and murder, despite the fact that his guilt was not proved beyond reasonable doubt.

The Court's Ruling

We sustain accused-appellant's conviction.

Factual findings of the trial court should be respected

In his Brief, accused-appellant says that the trial court failed to consider several inconsistencies in the testimonies of the prosecution witnesses. First, as to Tomaro, who directly implicated accused-appellant, his testimony was

unsubstantiated and did not conform to the physical evidence. According to Tomaro, Edmund was shot at close range yet no powder burns were found around the entry wound. Second, as to the testimony of Shenette Guiro, accused-appellant harps on the fact that she never mentioned Tomaro being present at the scene of the crime and that she only heard one gunshot while the other witnesses heard three or four. Lastly, as to the testimony of SPO1 Salamisán, accused-appellant points out that SPO1 Salamisán testified that he only saw one spot of blood when there were two victims.

To accused-appellant, the inconsistencies thus described erode the credibility of the witnesses when taken as a whole.

We do not agree.

Time-tested is the doctrine that the trial court's assessment of the credibility of a witness is entitled to great weight, sometimes even with finality.[7] The Supreme Court will not interfere with that assessment, absent any indication that the lower court has overlooked some material facts or gravely abused its discretion.[8]

Complementing the above doctrine is the equally established rule that minor and insignificant inconsistencies in the testimony tend to bolster, rather than weaken, the credibility of witnesses, for they show that the testimony is not contrived or rehearsed.[9] As the Court put it in *People v. Cristobal*, "Trivial inconsistencies do not rock the pedestal upon which the credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming." [10]

A careful review of the records shows that the RTC, as well as the CA, committed no reversible error when it gave credence to the testimonies of the prosecution witnesses, as opposed to accused-appellant's bare denials.

Moreover, the testimony of a witness must be considered in its entirety and not merely on its truncated parts. The technique in deciphering a testimony is not to consider only its isolated parts and anchor a conclusion on the basis of said parts. In ascertaining the facts established by witnesses, everything stated by them on direct, cross, and redirect examinations must be calibrated and considered.[11] It must be stressed in this regard that facts imperfectly or erroneously stated in an answer to one question may be supplied or explained as qualified by the answer to other question. The principle *falsus in uno, falsus in omnibus* is not strictly applied to this jurisdiction.[12] As explained in *People v. Osias*:

It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. And it has been aptly said that even when witnesses are found to have deliberately falsified in some material particulars, it is not required that the whole of their uncorroborated testimony be rejected but such portions thereof deemed worthy of belief may be credited.

The primordial consideration is that the witness was present at the scene of the crime and that he positively identified [the accused] as one of the perpetrators of the crime charged x x x.[13] (Emphasis supplied.)

In this case, we agree with the trial court that the alleged inconsistencies merely refer to minor details which do not affect the witnesses' credibility. In disregarding the alleged inconsistent statements, the trial court explained:

The inconsistencies are more imagined than real. The inconsistencies, like the ownership of the passenger jeepney, whether said jeepney is owned by Guiro or his mother, are so trivial and does not at all affect credibility.

The accused also makes much fuss about the fact that Shenette Guiro heard only one (1) shot while the other prosecution witnesses as well as the accused and his witness Magno Montinola, heard three (3) to four (4) shots. The accused conveniently forgot that Shenette Guiro was asleep when the shooting took place. She was awakened by the shot she heard and that shot might have been the last shot.

The accused flays the testimony of Jose Tomaro as incredible and unbelievable when the said witness testified that he ran and cradled Guiro in his arms after the latter was shot. The accused asserts that it is unnatural for a person to unnecessarily expose himself to danger.

The argument need not detain the Court. It is a settled rule on evidence that witnesses to a crime react in different ways. (Pp. vs. Paynor, 261 SCRA 615).

"There is no standard behavior when one is considered with a strange, startling or frightening situation." (Pp. v. De Leon, 262 SCRA 445)

Moreover, Jose Tomaro has no quarrel with the accused. He has every reason to expect that he will not be assaulted as he was not making any aggressive move against him.[14]

Likewise, we are not persuaded as to the alleged inconsistency of Tamaro's testimony that Edmund was shot at close range but the physical evidence revealed that there were no powder burns around the entry wounds. In his testimony, Tamaro described the incident as follows:

COURT:

Q:

Now according to your testimony, the next time around, Combate was pointing his gun at Prayco?

WITNESS

A:

Yes, sir.

Q:

He pointed his gun to Prayco and fired his gun. At the time he fired his gun, how far was he from Prayco?

COURT

Witness indicating a very short distance where the Court Interpreter is situated which is less than (1) meter away.[15] (Emphasis supplied.)

As aptly held by the CA, such testimony is in fact consistent with the lack of powder burns on Edmund's body, viz:

The distance from which a shot is fired affects the nature and extent of the injury caused on the victim. In close range fire, the injury is not only due to the missile but also due to the pressure of the expanded gases, flame and other solid products of combustion. In contrast, distant fire usually produces the characteristic effect of the bullet alone. A shot fired from a distance of more than 60 cm or about two (2) feet does not produce the burning, smudging or tattooing typically present in loose contact or near fire, short range fire and medium range fire.

Powder burns is a term commonly used by physicians whenever there is blackening of the margin at the entrance of the gunshot wound. The blackening is due to smoke smudging, gunpowder tattooing and, to a certain extent, burning of the wound margin.

In this case, the fact that there were no powder burns found in EDMUND's body indicates that the shots were fired at a distance of more than two (2) feet which is consistent with Jose Tomaro's testimony that Edmund was shot at about less than 1 meter away from appellant.[16]

Defense of denial cannot prevail over positive identification

For his defense, accused-appellant wants this Court to believe his innocence and offers his version of the facts wherein he did not commit the crime. This Court is not persuaded.

Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the defense of denial.[17] Accused-appellant was positively and categorically identified by the witnesses. They have no reason to perjure and accused-appellant was unable to prove that the prosecution witnesses were moved by any consideration other than to see that justice is done. Thus, the presumption that their testimonies were not moved by any ill will and bias stands, and, therefore, their testimonies are entitled to full faith and credit.[18]

Lest it be overlooked, accused-appellant fled to Victorias City, Negros Occidental right after the incident, an act that is evidence of his guilt. It is well-established that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn.[19] Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion.[20]

Award of damages

This Court will now endeavor to end, once and for all, the confusion as to the proper award of damages in criminal cases where the imposable penalty for the crime is reclusion perpetua or death. As a rule, the Court awards three kinds of damages in these types of criminal cases: civil indemnity and moral and exemplary damages. We shall discuss all three.

First, civil indemnity *ex delicto* is the indemnity authorized in our criminal law for the offended party, in the amount authorized by the prevailing judicial policy and apart from other proven actual damages, which itself is equivalent to actual or compensatory damages in civil law.[21] This award stems from Art. 100 of the RPC which states, "Every person criminally liable for a felony is also civilly liable."

Civil liability *ex delicto* may come in the form of restitution, reparation, and indemnification.[22] Restitution is defined as the compensation for loss; it is full or partial compensation paid by a criminal to a victim ordered as part of a criminal sentence or as a condition for probation.[23] Likewise, reparation and indemnification are similarly defined as the compensation for an injury, wrong, loss, or damage sustained.[24] Clearly, all of these correspond to actual or compensatory damages defined under the Civil Code.[25]

The other kinds of damages, i.e., moral and exemplary or corrective damages,[26] have altogether different jural foundations.

The second type of damages the Court awards are moral damages, which are also compensatory in nature. *Del Mundo v. Court of Appeals* explained the nature and purpose of moral damages, viz:

Moral damages, upon the other hand, may be awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered. Although incapable of exactness and no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is imperative, nevertheless, that (1) injury must have been suffered by the claimant, and (2) such injury must have sprung from any of the cases expressed in Article 2219[27] and Article 2220[28] of the Civil Code. (Emphasis supplied.)

Similarly, in American jurisprudence, moral damages are treated as "compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong." [29] They may also be considered and allowed "for

resulting pain and suffering, and for humiliation, indignity, and vexation suffered by the plaintiff as result of his or her assailant's conduct, as well as the factors of provocation, the reasonableness of the force used, the attendant humiliating circumstances, the sex of the victim, [and] mental distress." [30]

The rationale for awarding moral damages has been explained in *Lambert v. Heirs of Rey Castillon*: "[T]he award of moral damages is aimed at a restoration, within the limits possible, of the spiritual status quo ante; and therefore, it must be proportionate to the suffering inflicted." [31]

And lastly, the Court awards exemplary damages as provided for in Arts. 2229 and 2230 of the Civil Code, viz:

Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

Clearly, as a general rule, exemplary damages are only imposed in criminal offenses when the crime was committed with one or more aggravating circumstances, be they generic or qualifying. However, there have been instances wherein exemplary damages were awarded despite the lack of an aggravating circumstance. This led the Court to clarify this confusion in *People v. Dalisay*, where it categorically stated that exemplary damages may be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender, to wit:

Prior to the effectivity of the Revised Rules of Criminal Procedure, courts generally awarded exemplary damages in criminal cases when an aggravating circumstance, whether ordinary or qualifying, had been proven to have attended the commission of the crime, even if the same was not alleged in the information. This is in accordance with the aforesaid Article 2230. However, with the promulgation of the Revised Rules, courts no longer consider the aggravating circumstances not alleged and proven in the determination of the penalty and in the award of damages. Thus, even if an aggravating circumstance has been proven, but was not alleged, courts will not award exemplary damages. x x x

x x x x

Nevertheless, *People v. Catubig* laid down the principle that courts may still award exemplary damages based on the aforementioned Article 2230, even if the aggravating circumstance has not been alleged, so long as it has been proven, in criminal cases instituted before the effectivity of the Revised Rules which remained pending thereafter. *Catubig* reasoned that the retroactive application of the Revised Rules should not adversely affect the vested rights of the private offended party.

Thus, we find, in our body of jurisprudence, criminal cases, especially those involving rape, dichotomized: one awarding exemplary damages, even if an aggravating circumstance attending the commission of the crime had not been sufficiently alleged but was consequently proven in the light of *Catubig*; and another awarding exemplary damages only if an aggravating circumstance has both been alleged and proven following the Revised Rules. Among those in the first set are *People v. Laciste*, *People v. Victor*, *People v. Orilla*, *People v. Calongui*, *People v. Magbanua*, *People of the Philippines v. Heracleo Abello y Fortada*, *People of the Philippines v. Jaime Cadag Jimenez*, and *People of the Philippines v. Julio Manalili*. And in the second set are *People v. Llave*, *People of the Philippines v. Dante Gragasim y Par*, and *People of the Philippines v. Edwin Mejia*. Again, the difference between the two sets rests on when the criminal case was instituted, either before or after the effectivity of the Revised Rules.

x x x x

Nevertheless, by focusing only on Article 2230 as the legal basis for the grant of exemplary damages -- taking into account simply the attendance of an aggravating circumstance in the commission of a crime, courts have lost sight of the very reason why exemplary damages are awarded. Catubig is enlightening on this point, thus --

Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant -- associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud -- that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.

Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*, the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People of the Philippines v. Cristino Cañada*, *People of the Philippines v. Pepito Neverio* and *The People of the Philippines v. Lorenzo Layco, Sr.*, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales' words in her separate opinion in *People of the Philippines v. Dante Gragasin y Par*, "[t]he application of Article 2230 of the Civil Code strictissimi juris in such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages -- to set a public example or correction for the public good."^[32]

Before awarding any of the above-mentioned damages, the Court, however, must first consider the penalty imposed by law. Under Republic Act No. (RA) 7659 or An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, and for Other Purposes, certain crimes under the RPC and special penal laws were amended to impose the penalty of death under certain circumstances.

For a full appreciation of the award on damages, it is imperative that a thorough discussion of RA 7659 be undertaken. Each crime will be discussed as well as the proper amount of damages for each crime.

Under RA 7659, the following crimes are punishable by reclusion perpetua: piracy in general,^[33] mutiny on the high seas,^[34] and simple rape.^[35]

For the following crimes, RA 7659 has imposed the penalty of reclusion perpetua to death: qualified piracy;^[36] qualified bribery under certain circumstances;^[37] parricide;^[38] murder;^[39] infanticide, except when committed by the mother of the child for the purpose of concealing her dishonor or either of the maternal grandparents for the same purpose;^[40] kidnapping and serious illegal detention under certain circumstances;^[41] robbery with

violence against or intimidation of persons under certain circumstances;[42] destructive arson, except when death results as a consequence of the commission of any of the acts penalized under the article;[43] attempted or frustrated rape, when a homicide is committed by reason or on occasion thereof; plunder;[44] and carnapping, when the driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.[45]

RA 7659 imposes the penalty of death on the following crimes:

- (a) In qualified bribery, when it is the public officer who asks or demands the gift or present.
- (b) In kidnapping and serious illegal detention: (i) when the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person; (ii) when the victim is killed or dies as a consequence of the detention; (iii) when the victim is raped, subjected to torture or dehumanizing acts.
- (c) In destructive arson, when as a consequence of the commission of any of the acts penalized under Article 320, death results.
- (d) In rape: (i) when by reason or on occasion of the rape, the victim becomes insane or homicide is committed; (ii) when committed with any of the following attendant circumstances: (1) when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim; (2) when the victim is under the custody of the police or military authorities; (3) when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity; (4) when the victim is a religious or a child below seven years old; (5) when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease; (6) when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency; and (7) when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

Nevertheless, all these must be taken in relation to Art. 63 of the RPC, which provides:

Article 63. Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
- When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

Thus, in order to impose the proper penalty, especially in cases of indivisible penalties, the court has the duty to ascertain the presence of any mitigating or aggravating circumstances. Accordingly, in crimes where the imposable penalty is reclusion perpetua to death, the court can impose either reclusion perpetua or death,

depending on the mitigating or aggravating circumstances present.

But with the enactment of Republic Act No. (RA) 9346 or An Act Prohibiting the Imposition of Death Penalty in the Philippines, the imposition of death penalty is now prohibited. It provides that in lieu of the death penalty, the penalty of reclusion perpetua shall be imposed when the law violated makes use of the nomenclature of the penalties of the RPC.[46]

As a result, courts now cannot impose the penalty of death. Instead, they have to impose reclusion perpetua. Despite this, the principal consideration for the award of damages, following the ruling in *People v. Salome*[47] and *People v. Quiachon*,[48] is "the penalty provided by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender." [49]

When the circumstances surrounding the crime would justify the imposition of the penalty of death were it not for RA 9346, the Court has ruled, as early as July 9, 1998 in *People v. Victor*,[50] that the award of civil indemnity for the crime of rape when punishable by death should be PhP 75,000. We reasoned that "[t]his is not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time, but also an expression of the displeasure of the Court over the incidence of heinous crimes against chastity." [51] Such reasoning also applies to all heinous crimes found in RA 7659.

In addition to this, the Court likewise awards moral damages. In *People v. Arizapa*,[52] PhP 50,000 was awarded as moral damages without need of pleading or proving them, for in rape cases, it is recognized that the victim's injury is concomitant with and necessarily results from the odious crime of rape to warrant per se the award of moral damages.[53] Subsequently, the amount was increased to PhP 75,000 in *People v. Soriano*. [54]

As to exemplary damages, existing jurisprudence has pegged its award at PhP 30,000,[55] despite the lack of any aggravating circumstance. The reason, as previously discussed, is to deter similar conduct and to serve as an example for public good.

Essentially, despite the fact that the death penalty cannot be imposed because of RA 9346, the imposable penalty as provided by the law for the crime, such as those found in RA 7569, must be used as the basis for awarding damages and not the actual penalty imposed.

On the other hand, when the circumstances surrounding the crime call for the imposition of reclusion perpetua only, the Court has ruled that the proper amounts should be PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages.[56]

Accordingly, in Criminal Case Nos. 95-17070 and 95-17071, the exemplary damages awarded by the CA in the amount of PhP 25,000 should be increased to PhP 30,000.00 in line with prevailing jurisprudence.

Moreover, the deletion of the award of compensatory damages for unearned income by the CA in Criminal Case No. 95-17071 is proper. This Court pronounced in *People v. Mallari*: [57]

The rule is that documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity. By way of exception, damages therefore may be awarded despite the absence of documentary evidence provided that there is testimony that the victim was either (1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.

In this case, neither of the exemption applies. The earnings of Leopoldo at the time of his death were above minimum wage set by labor laws in his respective place at the time of his death.[58] As testified to by his wife,

Shenette Guiro, Leopoldo was earning between PhP 200 to PhP 300 per day. This is more than minimum wage. Hence, absent any documentary evidence, the award of compensatory damages must be deleted.

Likewise, the deletion of the award of compensatory damages by the CA in Criminal Case No. 95-17070 is proper for lack of any basis. The trial court did not discuss why it awarded compensatory damages to the heirs of Edmund.

Interest on 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.[59] In *People v. Tubongbanua*,[60] interest at the rate of six percent (6%) was ordered to be applied on the award of damages. This rule would be subsequently applied by the Court in several cases such as *Mendoza v. People*,[61] *People v. Buban*,[62] *People v. Guevarra*,[63] and *People v. Regalario*. [64] Thus, we likewise adopt this rule in the instant case. Interest of six percent (6%) per annum should be imposed on the award of civil indemnity and all damages, i.e., actual or compensatory damages, moral damages and exemplary damages, from the date of finality of judgment until fully paid.

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. CEB CR-H.C. No. 00294 finding accused-appellant Jose Pepito D. Combate guilty of the crimes charged is AFFIRMED with MODIFICATION. As modified, the ruling of the trial court should read as follows:

FOR ALL THE FOREGOING, judgment is hereby rendered finding the accused Jose Combate, Jr. y Dallarte alias Peping, GUILTY beyond reasonable doubt of the crime of HOMICIDE in Criminal Case NO. 95-17071 as Principal thereof. There being no modifying circumstances, the accused is sentenced to suffer the penalty of RECLUSION TEMPORAL in its medium period. Applying the Indeterminate Sentence Law, the accused shall serve a prison term of Eight (8) Years and One (1) Day of Prison Mayor to Fifteen (15) years of Reclusion Temporal.

By way of civil liability, the accused is condemned to pay the heirs of the late Leopoldo Guiro the following:

- The sum of P50,000.00 as civil indemnity; and
- The sum of P56,319.59 as reimbursement for the burial expenses.

In addition, the accused is ordered to pay Shenette Guiro the sum of P50,000.00 as moral damages and P30,000.00 as exemplary damages.

The accused is also declared GUILTY of MURDER for the death of Edmund Prayco as charged in the Information in Criminal Case No. 95-17070 as Principal thereof. There being no modifying circumstances, the accused is sentenced to suffer the penalty of RECLUSION PERPETUA. He is condemned to pay the heirs of the late Edmund Prayco the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P30,000.00 as exemplary damages.

Finally, interest at the rate of six percent (6%) per annum shall be applied to the award of civil indemnity, moral damages and exemplary damages from the finality of judgment until fully paid in the two (2) aforementioned criminal cases.

SO ORDERED.

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

- [1] Rollo, pp. 2-12. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Stephen C. Cruz and Amy Lazaro-Javier.
- [2] CA rollo, pp. 19-60. Penned by Judge Roberto S. Choingson.
- [3] Id. at 4.
- [4] Id. at 6.
- [5] Id. at 58-60.
- [6] Rollo, p. 11.
- [7] *People v. Sagun*, February 19, 1999, 303 SCRA 382; *People v. Villanueva*, January 29, 1999, 302 SCRA 380.
- [8] *People v. Gado*, 358 Phil. 956 (1998).
- [9] *People v. Sagun*, *supra* note 7, at 397.
- [10] *People v. Cristobal*, G.R. No. 116279, January 29, 1996, 252 SCRA 507, 517.
- [11] *Leyson v. Lawa*, G.R. No. 150756, October 11, 2006, 504 SCRA 147.
- [12] *People v. Montemayor*, 452 Phil. 283, 300 (2003).
- [13] G.R. No. 88872, July 25, 1991, 199 SCRA 574.
- [14] CA rollo, pp. 48-50.
- [15] TSN, April 5, 2002, p. 58.
- [16] Rollo, pp. 9-10.
- [17] *People v. Padilla*, G.R. No. 167955, September 30, 2009, 601 SCRA 385.
- [18] *People v. Quilang*, G.R. Nos. 123265-66, August 12, 1999, 312 SCRA 314.
- [19] *People v. Castillo*, G.R. No. 172695, June 29, 2007, 526 SCRA 215, 224.
- [20] *People v. Deduyo*, G.R. No. 138456, October 23, 2003, 414 SCRA 146, 162.
- [21] *People v. Victor*, G.R. No. 127903, July 9, 1998, 292 SCRA 186, 200-201.
- [22] Revised Penal Code, Arts. 104-107.
- [23] Black's Law Dictionary (8th ed., 2004).
- [24] Id.
- [25] Civil Code, Arts. 2194-2215.
- [26] Id., Arts. 2216-2235.
- [27] Art. 2219. Moral damages may be recovered in the following and analogous cases:
- (1) A criminal offense resulting in physical injuries;
 - (2) Quasi-delicts causing physical injuries;
 - (3) Seduction, abduction, rape or other lascivious acts;
 - (4) Adultery or concubinage;

- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in Article 309;
- (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brother and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[28] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[29] *Bagumbayan Corp v. Intermediate Appellate Court*, No. L-66274, September 30, 1984, 132 SCRA 441, 446.

[30] 6A C.J.S. Assault § 68.

[31] G.R. No. 160709, February 23, 2005, 452 SCRA 285, 296.

[32] G.R. No. 188106, November 25, 2009, 605 SCRA 807, 817-821.

[33] Art. 122. Piracy in general and mutiny on the high seas or in Philippine waters. - The penalty of reclusion perpetua shall be inflicted upon any person who, on the high seas, or in Philippine waters, shall attack or seize a vessel or, not being a member of its complement nor a passenger, shall seize the whole or part of the cargo of said vessel, its equipment or passengers.

The same penalty shall be inflicted in case of mutiny on the high seas or in Philippine waters.

[34] *Id.*

[35] Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua. x x x

[36] Art. 123. Qualified piracy. - The penalty of reclusion perpetua to death shall be imposed upon those who commit any of the crimes referred to in the preceding article, under any of the following circumstances:

1. Whenever they have seized a vessel by boarding or firing upon the same;
2. Whenever the pirates have abandoned their victims without means of saving themselves or;
3. Whenever the crime is accompanied by murder, homicide, physical injuries or rape.

[37] Art. 211-A. Qualified Bribery. - If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by reclusion perpetua and/or death in consideration of any offer, promise, gift or present, he shall suffer the penalty for the offense which was not

prosecuted. x x x

[38] Art. 246. Parricide. - Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death.

[39] Art. 248. Murder. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[40] Art. 255. Infanticide. - The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

[41] Art. 267. Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

[42] Art. 294. Robbery with violence against or intimidation of persons - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson. x x x

[43] Art. 320. Destructive Arson. - The penalty of reclusion perpetua to death shall be imposed upon any person who shall burn:

1. One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, committed on several or different occasions.
2. Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to, official governmental function or business, private

transaction, commerce, trade, workshop, meetings and conferences, or merely incidental to a definite purpose such as but not limited to hotels, motels, transient dwellings, public conveyances or stops or terminals, regardless of whether the offender had knowledge that there are persons in said building or edifice at the time it is set on fire and regardless also of whether the building is actually inhabited or not.

3. Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure.

4. Any building, factory, warehouse installation and any appurtenances thereto, which are devoted to the service of public utilities.

5. Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance.

Irrespective of the application of the above enumerated qualifying circumstances, the penalty of reclusion perpetua to death shall likewise be imposed when the arson is perpetrated or committed by two (2) or more persons or by a group of persons, regardless of whether their purpose is merely to burn or destroy the building or the burning merely constitutes an overt act in the commission or another violation of law.

The penalty of reclusion perpetua to death shall also be imposed upon any person who shall burn:

1. Any arsenal, shipyard, storehouse or military powder or fireworks factory, ordnance, storehouse, archives or general museum of the Government.

2. In an inhabited place, any storehouse or factory of inflammable or explosive materials. x x x

[44] Sec. 2. Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

[45] Sec. 14. Penalty for Carnapping. - Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by x x x the penalty of reclusion perpetua to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.

[46] RA 9346, Sec. 2.

[47] G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676.

[48] G.R. No. 170236, August 31, 2006, 500 SCRA 704, 720.

[49] See *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 44.

[50] G.R. No. 127903, July 9, 1998, 292 SCRA 186.

[51] Id. at 200-201.

[52] G.R. No. 131814, March 15, 2000, 328 SCRA 214.

[53] Id.

[54] People v. Soriano, G.R. No. 142779-95, August 29, 2002, 388 SCRA 140.

[55] People v. Abellera, G.R. No. 166617, July 3, 2007, 526 SCRA 329.

[56] People v. Sanchez, G.R. No. 131116, August 27, 1999, 313 SCRA 254.

[57] G.R. No. 145993, June 17, 2003, 404 SCRA 170.

[58] Under Wage Order No. VI-03 which covered Leopoldo Guiro (and which took effect on December 4, 1993), the minimum wage at the time of his death was PhP 114.35 per day.

[59] Nueva España v. People, G.R. No. 163351, June 21, 2005, 460 SCRA 547.

[60] G.R. No. 171271, August 31, 2006, 500 SCRA 727.

[61] G.R. No. 173551, October 4, 2007, 534 SCRA 668.

[62] G.R. No. 170471, May 11, 2007, 523 SCRA 118.

[63] G.R. No. 182192, October 29, 2008, 570 SCRA 288.

[64] G.R. No. 174483, March 31, 2009, 582 SCRA 738.

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