

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEOFILO SIMON Y IGLESIA, ACCUSED-APPELLANT.

G.R. No. 56925. May 21, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is an appeal from the decision of the then Criminal Circuit Court of Cabanatuan City in Criminal Case No. CCC-IV?11(79)-NE promulgated on 3 April 1981,[1] finding the accused guilty of two (2) separate crimes of murder and sentencing him:

"x x to suffer the penalty of reclusion perpetua for each of the two (2) crimes of murder, subject to the forty (40) years limitation prescribed in Article 70 of the Revised Penal Code; to indemnify the heirs of Hilario Abogado in the sum of P12,000.00 and the heirs of Juan Salazar also in the sum of P12,000.00; to reimburse the heirs of Hilario Abogado the amount of P4,700.00 incurred by them in the funeral and related sundry expenses and the heirs of Juan Salazar the sum of P4,900.00 for similar expenses incurred; to pay moral damages in the sum of P5,000.00 each to the family of the slain victims; and to pay the costs."[2]

Only one (1) information for double murder was filed in this case. It reads:

"That on or about the 5th day of January, 1979, in the municipality of Aliaga, province of Nueva Ecija, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, Teofilo Simon y Iglesia, armed with a firearm, with evident premeditation and by means of treachery, and with the intent to kill, did then and there wilfully, unlawfully, and feloniously shoot with said firearm Hilario Abogado and Juan Salazar, inflicting upon them serious and fatal wounds, as follows:

A. Hilario Abogado

Wound, gunshot, entrance, one centimeter in diameter located over the right temporal region, head, 3 centimeters lateral to the outer end of the right eyebrow with sero--sanguinous fluid, oozing from wound.

Wound, gunshot, exit 1.5 centimeters in diameter, located over the lateral side of the neck and on the left side, 3 centimeters behind the left ear, and at the level of the lower border of the ear lobe with sero-sanguinous fluids oozing from wound.

Fracture, linear, multiple, occipital and parietal region, head.

Wound, gunshot, grazing, measuring 5 centimeters in length and 3 centimeters in width, located over the dorsal surface of the left hand.

Cause of Death: Shock and hemorrhage, internal and external due to gunshot wound, head.

B. Juan Salazar

Wound, gunshot, entrance, located over the neck, 1 centimeter right of the midline and 4 centimeters above the clavicle, measuring 1 centimeter in diameter with sero-sanguinous fluid oozing from the wound.

Wound, gunshot, entrance, measuring one centimeter in diameter, located over the chest, right side 10 centimeters from the midline, and at the level of the 6th rib with sero--sanguinous fluid oozing from the wound.

Wound, gunshot, exit, measuring 1.5 centimeters in diameter located over the left side of the chest, and behind, at the level of the 6th rib with sero-sanguinous fluid oozing from the wound.

Wound, gunshot, exit, measuring 1.5 centimeters in diameter, located at the back, left side, 2 centimeters lateral to the spinal column, at the level of the first lumbar vertebrae, with sero-sanguinous fluid oozing from the wound.

Wound, gunshot, entrance, measuring 1.5 centimeters in diameter located over the right forearm, lateral side, 4 centimeters from the elbow joint.

Wound, gunshot, exit, measuring 2 centimeters in diameter, located over the right forearm, medial side, 10 centimeters from the elbow joint.

Cause of Death: Shock and hemorrhage, internal and external due to gunshot wounds, chest.

which caused their instantaneous death (sic), to the prejudice of their respective families in the amount of P60,000.00 representing actual, moral and consequential damages.

Contrary to law."[3]

The accused, however, did not raise the issue of duplicity.[4] Thus, the trial court correctly ruled that he waived his right to raise it as a ground to quash the information and therefore could be validly tried for and convicted of the two (2) offenses therein charged.[5]

This conviction rests upon the evidence for the prosecution which is summarized in the Brief for the People as follows:

"Victims, Hilario Abogado and Juan Salazar, were Barangay Captain of Poblacion East I, Aliaga, Nueva Ecija (p. 36, t.s.n., hearing of March 11, 1980) and Sangguniang Bayan Member of the same municipality (p. 26, id.), respectively, At about 5:00 o'clock in the morning of January 5, 1979, they were fatally shot at the ground floor of the house of victim Hilario Abogado located at the poblacion. At that time Candida Abogado, eighteen year old daughter of victim Hilario Abogado, was in bed upstairs. When she heard the gunshots coming from the groundfloor, she rushed downstairs. She saw appellant Teofilo Simon in fatigue trousers carrying a sack with the muzzle of a gun protruding. Sensing that someone had noticed him, appellant sprinted towards the back of the house (pp. 3-8, 10-12, t.s.n., Jan. 15, 1980).

Later, at about 6:00 o'clock in the morning of the same day, appellant in fatigue trousers, arrived at the house of Maximo Sanchez at barangay Sto. Rosario of the same municipality where he took a cup of coffee. He carried with him a sack with an armalite rifle in it (pp. 5-7, 11-12, t.s.n., hearing of March 12, 1980).

On the morning of the same day, Sgt. Emiliano Agbanawag of Aliaga Police Station, together with three policemen, conducted an on-the-spot investigation of the killings. They recovered two slugs (Exh. E) from the scene of the crime (pp. 13-14, 16, t.s.n., hearing of March 12, 1980).

Dr. Vicente de Lara, Rural Health Officer of aforesated municipality also went to at (sic) the scene of the crime in the morning of the same day. He examined the bodies of victims Hilario Abogado and Juan Salazar (pp. 5, 8, t.s.n., hearing of Oct. 3, 1979). His post-mortem report (Exh. A, p. 2, rec.) on Victim Hilario Abogado is as follows:

'Wound, gunshot, entrance, one centimeter in diameter located over the right temporal region, head, 3 centimeters lateral to the outer end of the right eyebrow, with serosanguinous fluid, oozing from wound.

Wound, gunshot, exit 1.5 centimeters in diameter, located over the lateral side of the neck and on the left side, 3

centimeters behind the left ear, and at the level of the lower border of the ear lobe with serosanguinous fluids oozing from wound.

Fracture, linear, multiple, occipital and parietal region, head.

Wound, gunshot, grazing, measuring 5 centimeters in length and 3 centimeters in width, located over the dorsal surface of the left hand' (Exh. A, p. 2, rec.)

And that of his report (Exh. B, p. 3, rec.) on victim Juan Salazar is as follows:

'Wound, gunshot, entrance, located over the neck, 1 centimeter right of the midline and 4 centimeters above the clavicle, measuring 1 centimeter in diameter with serosanguinous fluid oozing from the wound.

Wound, gunshot, entrance, measuring one centimeter in diameter located over the chest, right side 10 centimeters from the midline, and at the level of the 6th rib with serosanguinous fluid oozing from the wound.

Wound, gunshot, exit, measuring 1.5 centimeters in diameter located over the left side of the chest, and behind, at the level of the 6th rib with serosanguinous fluid oozing from the wound.

Wound, gunshot, exit, measuring 1.5 centimeters in diameter, located at the back, left side, 2 centimeters lateral to the spinal column, at the level of the first lumbar vertebrae, with sero-sanguinous fluid oozing from the wound.

Wound, gunshot, entrance, measuring 1.5 centimeters in diameter located over the right forearm, lateral side, 4 centimeters from the elbow joint.

Wound, gunshot, exit, measuring 2 centimeters in diameter, located over the right forearm, medial side, 10 centimeters from the elbow joint' (Exh. B, p. 3, rec.)

According to him, both victims died of shock and hemorrhage, internal and external, due to gunshot wounds (Exhs. A, B, id.).

Mrs. Cresenciana Abogado, wife of victim Hilario Abogado, and Mrs. Elena Salazar, wife of victim Juan Salazar, spent P4,700 and P4,900, respectively, for funeral services, vigil and miscellaneous expenses as a consequence of the death (sic) of their husbands (pp. 6, 19-21, t.s.n., hearing of March 11, 1980)."[6]

and the trial court's conclusion that "the killing was qualified by treachery (alevosia)," because:

"x x x It was treacherous to shoot Hilario Abogado and Juan Salazar while the two (2) local officials were having coffee early in the morning inside the kitchen and without the slightest inkling that the accused would kill them. It was an ambush, a mode of execution resorted to by the accused to insure the consummation of the killing without any risk to himself arising from any defense which the victim could have made. x x x"[7]

It rejected accused's defense of alibi which it summarized in this wise:

"For his absolution, accused Teofilo Simon interposed the defense of denial and alibi. He claimed that on January 5, 1979, when Hilario Abogado and Juan Salazar were killed, he was staying in a place in Pateros, Fort Bonifacio, more particularly at No. 45 Tarhata St., Pambo, Metro Manila. He was employed as a bus conductor in one of the mini-buses owned and operated by Hermogenes del Rosario.

His story is that on the night of January 4, 1979, after the passenger bus in (sic) which he was a conductor had returned to the garage about 11:00 to 11:30 o'clock in the evening, he went straight to their quarters, shortly after turning over the earnings for the day to their employer, Hermogenes del Rosario. Inside their quarters, he had (sic) conversation with his bus driver, Dennis Bataycan, and some co-workers. He slept between 12:00 and 12:30 o'clock. It was already January 5, 1979. Around 5:00 to 5:30 in the morning, his employer woke them up and told them they were going somewhere to purchase goats to be butchered and cooked for the wedding feast.

Hermogenes del Rosario's son, Romeo, was getting married on January 6, 1979. He became acquainted with Romeo del Rosario when they were both still in the military service, and when his term with the military ended, Romeo invited him to their place. Hermogenes del Rosario had some passenger buses and Simon started as a temporary bus conductor. He became close to Romeo and was privy even to the secret marriage of Romeo to a 'balikbayan,' which marriage was held in U.P. Balara in Quezon City.

Simon narrated that with Hermogenes del Rosario, they bought seven (7) goats in Quezon Boulevard. On returning to the house of the Del Rosario's, he helped in butchering the goats. And though he regarded himself as a very close friend of Romeo, he stayed in the house when the marriage took place in the chapel Fort Bonifacio. On March 26, 1979, he sought and obtained the permission of his employer to take a vacation and visit his parents in San Jose City, Nueva Ecija. He wanted to be home in time for the town fiesta; after the celebration, however, he had to stay to repair their damaged fence. On April 22, 1979, he was arrested in their house at No. 238 San Roque St., Abar 1st, San Jose City."[8]

Accused filed a Notice of Appeal[9] five (5) days after the promulgation of the decision.

In his Appellant's Brief,[10] accused imputes upon the lower court the commission of the following errors:

"I

X X X IN GIVING CREDENCE TO THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION PARTICULARLY CANDIDA ABOGADO AND MAXIMO SANCHEZ;

II

X X X IN CONCLUDING THAT POSITIVE IDENTIFICATION WAS MADE IN THE PERSON OF THE ACCUSED WHEN THE TESTIMONIES OF CANDIDA ABOGADO AND MAXIMO SANCHEZ WERE (sic) THE SAME WAS BASED WERE NOT ONLY FILLED WITH INCONSISTENCIES BUT WERE ALSO INCREDIBLE AND CONTRARY TO HUMAN BEHAVIOR AND NATURE;

III

X X X IN NOT GIVING WEIGHT TO THE TESTIMONIES OF THE WITNESSES FOR THE DEFENSE PARTICULARLY THAT OF HERMOGENES DEL ROSARIO AND DENNIS BATAYCAN AND THAT OF THE ACCUSED TEOFILO SIMON THAT AT THE TIME OF THE INCIDENT, ACCUSED WAS ONE HUNDRED THIRTY (130) KILOMETERS AWAY FROM THE SCENE OF THE CRIME AT THE TIME OF THE INCIDENT;

IV

X X X IN MAKING A CONCLUSION THAT ACCUSED COMMITTED THE CRIME WHEN AT THE TIME OF THE COMMISSION HE WAS 130 KILOMETERS AWAY OR A TOTAL DISTANCE OF 260 KILOMETERS BACK AND FORTH FROM THE SCENE OF THE CRIME;

V

X X X IN CONVICTING THE ACCUSED BASED ON HAZY, UNDEPENDABLE, HIGHLY IMPROBABLE AND BIAS (sic) TESTIMONIES."[11]

Being interrelated, the first, second and fifth assigned errors shall be taken up together. The principal issue raised therein is one of credibility. One of the many doctrines which has evolved from jurisprudence and which this Court has steadily sustained in a host of cases is that appellate courts will generally not disturb the factual findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses

themselves and observed their deportment and manner of testifying during the trial, unless the court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[12]

The trial court gave full faith and credit to the testimonies of Candida Abogado and Maximo Sanchez and their positive identification of the accused. In respect to Candida, it held:

"x x x The eyewitness-testimony of Candida Abogado that she saw Teofilo Simon about to enter the kitchen of their house immediately after she heard two (2) bursts of gunfire, carrying a rifle wrapped inside a sack, and that Simon quickly turned back and ran towards the yard when he saw her looking at him, is, to the mind of the Court, sufficient to establish the identification of the accused. Candida testified in a straightforward manner. Her answers to the questions propounded to her were to the point, plausible and consistent. The Court finds no compelling reason why it should not believe her testimony. Nor is the claim of the defense that Candida could not immediately after the incident make a clear and specific identification of the person who killed the victims adequate to overturn the weight of her testimony. For it is a matter of human experience that on the occasion of a very startling occurrence, especially when it involves the life of a loved one, a witness may not, because of the shock, readily recognize the face of the author of the offense though such face has been known to her for a long time; and it is only after sometime, after the mental faculties shall have calmed down, after repeated recollection in the mind, that the picture becomes clear and a sudden realization dawns that the malefactor she had seen had been no other than the one she did not, at the time of the event, associate with it. The accused has not shown any fact or circumstance from which it could be inferred that said witness falsely testified or that she was actuated by improper motives. It has been held that where no improper motive has been shown, relationship of the witness to the victim does not render the clear and positive testimony of said witness less worthy of credence (People vs. Vegayan, et al., L-37839, July 25, 1979)."[13]

In respect to Maximo Sanchez, the trial court stated:

"The defense has not offered any explanation as to why Maximo Sanchez, a simple farmer, would falsely testify against the accused. x x x The testimony of Maximo Sanchez narrated in a simple manner, has the earmarks of sincerity and is entitled to full weight."[14]

Accused, however, maintains that when first investigated immediately after the incident, Candida categorically stated that she did not recognize the assailant. This is incorrect. What Candida conveyed in her sworn statement, taken when she was investigated a day after the incident, and which the accused marked as Exhibit "1", [15] was that while she does not know the name of the assailant, she could recognize him if she saw him again. Thus:

"09 – T - Nakilala mo ba kung sino ang taong ito na papasok sa kusina ng inyong bahay ng mga sandaling iyon?

S - Hindi ko po siya kilala subalit kung makikita ko po siyang muli ay makikilala ko siya."[16]

At the said investigation, she was shown a picture of a man.[17] Without hesitation, she declared that the man in the picture is the same person she saw in their house on the morning of 5 January 1979 who was carrying a firearm placed inside a sack and who sprinted towards the back of their house when he noticed her. Thus:

"13 -- T - Nasabi mo na mayroon kang taong nakita na papasok sa kusina ng inyong bahay na ikaw ay naroroon sa ibaba subalit ng ikaw ay kaniyang makita ay tumalikod siya at biglang tumakbo palayo at sinabi mo rin na ito ay hindi mo kilala subalit kung inyong makikita ay mamumukhaan mo?

S - Opo.

14 -- T - Mayroon akong ipakikita sa iyo na isang larawan (The investigator is showing a picture to the affiant), ano ang iyong masasabi dito sa larawang Ito?

S - Iyan nga po ang taong aking nakita."[18]

Accused further argues that in her testimony, Candida testified that she had known him since he was thirteen (13) years old. If this were so, she should have mentioned his name at the time of the investigation instead of relying on a picture to identify him. This contention is fallacious. It was not explicitly established that Candida knew his name to be Teofilo Simon; she had not even called him by that name.[19] The picture was used by the investigator not for the purpose of aiding Candida in identifying the accused but for the purpose of either convincing himself that Candida knew or could recognize the accused or obtaining additional evidence to prove that she was telling the truth when she said that she could recognize the man if she saw him again.

The allegation of the accused that the "identification through picture was engineered and planned by the investigating policeman (sic) led by Policemen Agbannawag and Lina who had some ill-feelings against the accused,"[20] is a sweeping accusation which finds no credible basis. It has not been shown that Candida and Maximo were enticed, cajoled, induced or inveigled by the policemen to falsely impute upon the accused the commission of a grave offense. The so-called ill-feelings allegedly arose out of the accused's failure to give Agbannawag and Lina garand bullets, a pistol and a carbine. That incident took place on 26 April 1978.[21] It is too trivial a cause and too remote an occurrence to deserve any credit, even as the story itself is simply incredible. Accused failed to inform the court what his occupation was in 1978 and why Agbannawag and Lina, as peace officers, would request from him firearms and ammunition. In the absence of any proof that he was in a position to legally give or deliver firearms and ammunition to peace officers, this Court sees no reason why the latter would make the request. If he had the firearms and ammunition but no authority to keep or possess them, it would be most unlikely that the peace officers, unless they were unfaithful to their sworn duties, would deal with the accused. No evidence had been offered to prove that the abovenamed peace officers were unfaithful to their public duties.

No improper or ulterior motives which could cast a cloud of doubt on the testimonies of Candida and Maximo were shown by the evidence for the accused or suggested, even remotely, in the answers they gave on cross-examination. The totality of their testimonies indicated their adherence to truth and their desire to help the court arrive at the truth. It is settled that where there is no evidence, and nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[22]

Accused has not substantiated his claim of inconsistencies obtaining in the testimonies of Candida and Maximo.

Under the third and fourth assigned errors, the accused wants this Court to credit his defense of alibi. The trial court has adequately disposed of this issue and We are in full accord with its findings and conclusion, thus:

"It is well-settled that in order than an alibi as a defense may prosper, the evidence to support it must be clear and convincing as to preclude the possibility of the accused's presence at the scene of the crime, while the evidence as to his identification must be weak and insufficient (People vs Casillar, L-28132, November 25, 1969, 30 SCRA 353; People vs Alcantara, L-26867, June 30, 1970, 33 SCRA 813). And that alibi, in order to be given full faith and credit, must be clearly established and must not leave any room for doubt as to its plausibility and verity (People vs Segario, L-18659, June 29, 1965; People vs Basilan, L-18770, July 30, 1965; People vs Dayday, L-20806-07, August 14, 1965).

Does the alibi set up by accused Simon meet the foregoing yardstick?

Accused Simon testified that when the passenger bus in which he was a conductor returned to the garage situated in Palimbo, Fort Bonifacio, Metro Manila, it was about 11:00 to 11:30 o'clock in the evening of January 4, 1979. After turning over the money earnings to his employer, accused Simon went to their sleeping quarters. He had a brief conversation with his fellow workers. He slept between midnight and 12:30 o'clock in the morning of the following day, January 5, 1979. He could leave the quarters and slip away. Teofilo Simon

declared, thus:

‘Q: Now, this sleeping quarter where you went to sleep on the night of January 4, 1979, you could easily leave that if you want to get out, is that correct?

A: Yes, sir (p. 21, t.s.n., hearing of February 13, 1981; Villarin).’

Contrary to the accused's claim that his employer roused him from sleep at around 5:00 to 5:30 o'clock in the morning (p. 10, t.s.n., hearing of February 13, 1981; Villarin), Hermogenes del Rosario testified on direct examination that he woke up Simon around 6:00 o'clock or 7:00 o'clock in the morning (p. 7, hearing of January 12, 1981; Villarin). In short, the defendant's employer, Hermogenes del Rosario, was not certain about the time. Dennis Bataycan, driver of the bus, testified for the defense and substantially corroborated the allegation of the accused. He admitted on cross-examination that when he drove the passenger bus back to the garage at around 11:00 o'clock in the evening of January 4, 1979, he was very tired because the driver who was to relieve him did not arrive. When he fell asleep, he went into a deep slumber (pp. 7-8, t.s.n., session of February 12, 1981; Villarin). It is thus possible that Simon could have slipped away at early dawn and come back in the morning without being detected.

The Court accepts the defense counsel's estimate that the distance from the sleeping quarters of the accused in Fort Bonifacio, Metro Manila, to the situs of the shooting in Aliaga, Nueva Ecija, is around 130 kilometers (Please see page five, Memorandum for the Accused). The Court observes, too, that said distance can be negotiated in a motor vehicle in two (2) hours, driving at moderate speed. The time could be cut down some more if travel is done in light traffic, especially at dawn and in the very early morning hours. Judicial notice is taken of the fact that Aliaga, Nueva Ecija, can be reached by either of two (2) principal routes of travel, to wit: 1) by motoring along E. Delos Santos Highway to the North Diversion Road down to Dau, Pampanga, then up to Tarlac, Tarlac, thence to La Paz, Tarlac, then to Zaragoza, Nueva Ecija, and finally to Aliaga; or 2) by driving along Epifanio de los Santos Highway to the North Diversion Road down to the Sta. Rita Exchange, thence through Plaridel, Baliwag up to San Miguel, Bulacan, to Gapan, San Leonardo, Sta. Rosa, Cabanatuan City and up to Aliaga, all in Nueva Ecija. An assassin in a motor vehicle could, therefore, leave his quarters before 3:00 o'clock in the morning and be in Aliaga, Nueva Ecija, at around 5:00 o'clock in the morning, take an hour or less to escape from the scene of the crime, and drive back to his quarters at around 8:00 o'clock in the morning, without being noticed. In fine, the evidence to support the alibi is not clear and convincing as to preclude the possibility of the defendant's presence at the scene of the crime (People vs Lumantas, L-28355, July 17, 1969; People vs Ali, L-18519, October 30, 1969; People vs Managan, L-32733, September 11, 1974)."[23]

As with the trial court, this Court is likewise convinced beyond any shadow of a doubt that the accused was sufficiently identified.

We are, however, unable to agree with the conclusion of the trial court that treachery attended the killing of the victims Hilario Abogado and Juan Salazar; hence, accused is only liable for two (2) separate crimes of homicide. The information alleges evident premeditation and treachery as qualifying circumstances. The trial court correctly ruled that the first was not proven by the prosecution. Its conclusion on treachery, as earlier adverted to, is nothing more than speculation or conjecture. Nobody saw the relative positions of the victims in respect to the accused immediately before and at the time of the shooting. Nobody testified as to what exactly happened immediately before and during the incident, or how the initial attack was commenced and how it developed until the victims were killed. The rule is settled that treachery cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself.[24] As this Court stated in People vs. Narit:[25]

“x x x For, as held in U.S. vs. Perdon[26] where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the victim began and developed, it can in no way be established from mere suppositions, drawn from circumstances prior to the very moment of the

aggression, that an accused perpetrated the killing with treachery.[27] Accordingly, treachery cannot be considered where the lone witness did not see the commencement of the assault." [28]

Accordingly, the accused should only be held liable for two (2) separate crimes of homicide.

The penalty for homicide is reclusion temporal,[29] which may be imposed in its medium period since neither aggravating nor mitigating circumstances were proven in this case.[30] The duration of reclusion temporal medium is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

Accused is entitled to the benefits of the Indeterminate Sentence Law. An indeterminate penalty whose minimum shall be within the range of prision mayor, which is the penalty next lower in degree to that provided for in Article 249 of the Revised Penal Code, and whose maximum should be within the range of reclusion temporal medium, may properly be imposed upon him. Following recent case law,[31] the indemnity for each death should be P50,000.00.

WHEREFORE, except as above modified, the judgment appealed from is **AFFIRMED** in all other respects. As modified, the accused TEOFILO SIMON y IGLESIA, is found guilty beyond all reasonable doubt of two (2) crimes of Homicide for the killing of Hilario Abogado and Juan Salazar and is sentenced in each to an indeterminate penalty ranging from Eight (8) years and One (1) day of Prision Mayor Medium as MINIMUM to Fourteen (14) years, Eight (8) months and One (1) day of Reclusion Temporal Medium as MAXIMUM and is ordered to indemnify the heirs of Hilario Abogado in the sum of P50,000.00 and the heirs of Juan Salazar in the sum of P50,000.00.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Penned by Judge Fermin Martin, Jr.

[2] Rollo, 9-23.

[3] Original Records, 33-34.

[4] Section 3(e), Rule 117, in relation to Section 13, Rule 110, Rules of Court.

[5] Provincial Fiscal of Nueva Ecija vs. Court of First Instance, 79 Phil. 165 [1947]; People vs. Guzman, 104 Phil. 1052 [1958].

[6] Brief for the Plaintiff-Appellee, 3-6; Rollo, 106.

[7] Original Records, 146.

[8] Original Records, 141-142.

[9] Id., 152.

[10] Rollo, 52, et Cseq.

[11] Rollo, 54-55.

[12] A few examples of such cases are: People vs. Espejo, 36 SCRA 400 [1970]; People vs. Mercado, 97 SCRA 232 [1980]; People vs. Amoncio, 122 SCRA 686 [1983]; People vs. Macayan, 126 SCRA 322 [1983]; People vs. Bado, 128 SCRA 38 [1984]; People vs. Itura, 129 SCRA 127 [1984]; People vs. Centeno, 130 SCRA 198 [1984];

- People vs. Alcid, 135 SCRA 280 [1985]; People vs. Picardal, 151 SCRA 170 [1987];
- [13] Original Records, 144-145.
- [14] Id., 145-146.
- [15] Original Records, 9.
- [16] Exhibit "1-D", in Exhibit "1".
- [17] Exhibit "C".
- [18] Exhibit "1-E" and "1-F", in Exhibit "1".
- [19] TSN-Villarin, 13 February 1980, 33-34.
- [20] Brief for Appellant, 10; Rollo, 65.
- [21] TSN-Villarin, 13 February 1981, 260-263.
- [22] People vs. Araya, 105 SCRA 133 [1981]; People vs. Campana, 124 SCRA 271 [1983]; People vs. Patog, 144 SCRA 429 [1986]; People vs. de Jesus, 145 SCRA 521 [1986]; People vs. Clavo, Jr., 165 SCRA 695 [1988]; People vs. Jutie, 171 SCRA 586 [1989].
- [23] Original Records, 142-144.
- [24] People vs. Manalo, 148 SCRA 98 [1987]; People vs. Gaddi, 170 SCRA 649 [1989].
- [25] 197 SCRA 334 [1991].**
- [26] 4 Phil. 141 [1905].
- [27] Citing People vs. Ablao, 183 SCRA 658 [1990].
- [28] Citing People vs. Durante, 53 Phil. 363 [1929]; People vs. Cananowa, 92 SCRA 427 [1979]; People vs. Repe, 175 SCRA 422 [1989]; People vs. Villapando, 178 SCRA 341 [1989].
- [29] Article 249, Revised Penal Code.
- [30] Article 64(1), Revised Penal Code.
- [31] People vs. Sison, 189 SCRA 643 [1990]; People vs. Sazon, 189 SCRA 700 [1990]; People vs. Narit, supra.; People vs. Dapitan, 197 SCRA 378 [1991]; People vs. Tiozon, 198 SCRA 368 [1991]; People vs. Lubreo, 200 SCRA 11 [1991]; People vs. Barba, G. R. No. 50433, 13 November 1991; People vs. Lee, G.R. No. 66848, 20 December 1991.

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