

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEOFILO KEMPIS, ACCUSED-APPELLANT.

G.R. No. 97169. May 10, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is an appeal from the decision in Criminal Case No. 841 of Branch 10 of the Regional Trial Court (RTC), Eighth Judicial Region, at Abuyog, Leyte, promulgated on 9 October 1990[1] finding the accused guilty beyond reasonable doubt of the crime of murder, and sentencing him:

"x x x to suffer the penalty of RECLUSION PERPETUA, to indemnify the heirs of Lolito Rivero the amount of P30,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The accused who has been detained since his arrest on May 19, 1989 up to the present is hereby accorded full credit of the preventive imprisonment he has undergone, pursuant to Art. 29 of the Revised Penal Code.

SO ORDERED."[2]

Accused Teofilo Kempis, then a member of the Philippine Constabulary (PC), was initially charged with two (2) counts of murder, viz.: for the stabbing of Antonio Miraflor and the shooting of Lolito Rivero, grave threats and abuse of authority. In preparation for a general court martial proceedings, Sgt. Samuel Rosales of the Office of the Regional Inspector (ORI) of the PC/INP Regional Command 8 at Camp September 21st Movement, Palo, Leyte, conducted an investigation. In his Investigation Report to the Regional Inspector General of the said command dated 13 December 1988, Sgt. Rosales recommended that the case be referred to the Regional Judge Advocate for the latter's legal opinion.[3] In the meantime, however, the accused was discharged from the service. The records of the case were then transmitted to the Office of the Provincial Prosecutor of Leyte for appropriate action.

In due course, the Provincial Prosecutor of Leyte caused to be filed on 13 April 1989 the Information in Criminal Case No. 841, the accusatory portion of which reads:

"That on or about the 15th day of September, 1988, in the Municipality of Mayorga, province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, shot (sic) and wound one LOLITO RIVERO with an M-16 rifle with which said accused had purposely provided himself, thereby causing and inflicting upon him gunshot wounds on his body which caused his death.

Contrary to law."[4]

The accused entered a plea of not guilty during his arraignment on 29 June 1989.[5]

Trial on the merits then ensued.

Seven (7) witnesses[6] testified for the prosecution. For the defense, the accused testified on his behalf and presented six (6) other witnesses,[7] including the common-law wife of the victim.

In convicting the accused, the trial court relied on the prosecution's version which, except for the name of the victim which should read Lolito Rivero and not Rivera, is succinctly, but faithfully, summarized in the Brief for the Appellee[8] as follows:

"At about 3:00 o'clock in the afternoon of September 15, 1988, Lolito Rivera was at his house located in Bgy. Talisay, Mayorga, Leyte. Rivera had just butchered a pig and was cooking lunch for his guests which included Carmencita Navarro, Corazon de Paz, Rivera's common-law wife and Rivera's sister Rosalina Adonis. Suddenly, appellant Kempis a member of the Philippine Constabulary (PC) and a companion, Wilfredo Bautista arrived at the yard of Rivera's house on a board (sic) a motorcycle. Both were armed with armalite rifles. Appellant insisted on bringing Rivera with them and directed Rivera who was standing near the kitchen door to board the motorcycle. Rivera, however, declined saying that he was cooking. Angered by such refusal, appellant successively fired his armalite rifle at Rivera hitting the latter's arm, chest and mouth while Bautista who stationed himself behind a banana tree had his rifle Rivera (sic) died instantly.

Thereafter, appellant and Bautista boarded their motorcycle and left (pp. 4-9, tsn, June 15, 1989). Adonis went to the house of the barangay captain to report the incident but since the latter was not there, Adonis immediately proceeded to the Police Station at Mayorga, Leyte (pp. 21-22, supra).

Postmortem Examination shows that five of the seven wounds inflicted on Rivera were gunshot wounds."[9]

On the other hand, the accused's version discloses that the incident in question actually occurred on 16 September 1988 -- not on 15 September 1988 -- and that he killed Lolito Rivero under circumstances that could exempt or mitigate his liability. His counsel puts the matter in more explicit terms before starting with the direct examination of the accused:

x x x

"Additionally, we are offering the testimony of the witness to show that the incident happened under circumstances that could exempt or mitigate the liability of the accused."[10]

As condensed in his Brief,[11] the accused's version reveals that:

"At about 3:00 o'clock on September 16, 1988 -- not September 15, 1988 -- the accused, who was a PC soldier, went to the house of one Lolito Rivero, at Barangay Talisay, Mayorga, Leyte, for the purpose of advising the latter not to steal and create trouble in their town. Upon reaching Rivero's house, the accused met his common-law-wife Corazon de Paz Catanoy who had a visitor then by the name of Francisca Rinoza. (Francisca Rinoza was there because she was demanding payment of Corazon's debt to her). When the accused asked from Corazon where Rivero was, she told the accused that Rivero was in their kitchen doing something. At the time, the accused was carrying his M-16 rifle slung on his left shoulder with its barrel pointing down. Upon reaching the door of the kitchen, the accused did advise Rivero as he intended. Rivero told him 'I will not do it again, Sir, as I have just come out of jail.' Hearing Rivero's promise, the accused turned his back to leave. It was at that juncture that Rivero immediately grabbed the accused's M-16 rifle. They grappled for the rifle until it went off and Rivero was hit. The latter died because of gunshot wounds."[12]

As to the prosecution's claim that the incident occurred on 15 September 1988, the accused set up the defense of alibi. According to him, he was in barangay Cabacungan, Dulag, Leyte -- specifically in the house of Dominador Kempis -- from:

"About 12:00 o'clock noontime up to late afternoon." [13]

for the wake of his cousin, Diosdado Kempis, who had been killed. [14] Dominador Kempis testified that the accused arrived at his house at about "1:00 o'clock to 2:00 o'clock" and left at about "6:00 o'clock in the afternoon." [15]

The trial court gave full faith and credit to the testimonies of the prosecution witnesses and pronounced that Lolito Rivero was in fact shot and killed by the accused on 15 September 1988. It brushed aside the alibi interposed by the latter because Rivero's place is located in the Municipality of Mayorga which is adjacent to the Municipality of Dulag. It is in Dulag where the accused claims to have been for the wake of Diosdado Kempis. The court *quo* observed that "it would not have been impossible for the accused to have gone to Bgy. Talisay (in Mayorga) and kill Lolito as accused admitted he owns a motorcycle." [16] Moreover, the court declared that the accused "was positively identified by the prosecution witnesses that he killed Lolito Rivero on September 15, 1988." [17]

Anent the accused's claim of self-defense, the trial court rejected the same as it was of the opinion that the accused, being a soldier, was more knowledgeable and trained in the use of firearms than the victim, a mere farmer, "who at the time of the incident was not even armed with a bolo or any weapon." The court added that "even granting x x x that Lolito was able to grab the gun x x x Lolito x x x would have not know (sic) how to use it on the accused." [18] It further observed that although the accused reported the killing to the police, he failed to inform the latter that he had merely acted in self-defense.

After the promulgation of the decision on 9 October 1990, the accused seasonably filed a Motion for Reconsideration [19] alleging therein that the trial court erred (a) in not crediting him with the mitigating circumstance of voluntary surrender and (b) in ruling that the incident actually took place on 16 September 1988 and not on 15 September 1988 as testified to by prosecution witnesses Rosalina Adonis, Urbano Adonis and Carmen Navarro, and as evidenced by the death certificate of the victim, a xerox copy of which was annexed to the motion. The prosecution opposed the motion. [20] In its Order of 8 January 1991, the trial court denied the motion. [21]

On 21 January 1991, the accused filed his Notice of Appeal. [22]

In his Brief, the accused imputes upon the lower court the commission of the following errors:

"First Assignment of Error

X X X IN IGNORING THE TESTIMONIAL AND DOCUMENTARY EVIDENCE OF THE DEFENSE WHICH CLEARLY SHOWED THAT THE TESTIMONIES OF PROSECUTION WITNESSES ROSALINA ADONIS AND CARMEN NAVARRO WERE UNTRUE AND INCREDIBLE.

X X X

Second Assignment of Error

THE LOWER COURT WAS BIASED AGAINST THE ACCUSED AND FAILED TO EXERCISE THE COLD NEUTRALITY EXPECTED OF AN IMPARTIAL ARBITER, IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE ACCUSED.

X X X

Third Assignment of Error

X X X IN GIVING CREDENCE TO THE TESTIMONY (sic) OF THE PROSECUTION WITNESSES DESPITE THE FACT THAT THE SAME ARE INHERENTLY INCREDIBLE AND CONTRARY TO THE

COMMON EXPERIENCE OF MAN.

X X X

Fourth Assignment of Error

X X X IN NOT GIVING THE DEFENSE AN OPPORTUNITY TO PRESENT THE DEATH CERTIFICATE OF THE DECEASED LOLITO RIVERO, OR AT LEAST CONSIDER THE SAME IN ITS DECISION."[23]

The primary reasons relied on for the first assigned error are that (a) the declarations of prosecution witnesses Rosalina Adonis and Carmen Navarro that the incident in question took place on 15 September 1988 are false because according to defense witness Antonio Varona, it actually happened on 16 September 1988, the day he requested the victim, Lolito Rivero, to slaughter a pig, and (b) the trial court disregarded Entries No. 904 and No. 905 of the Mayorga Police Blotter which were made immediately after the incident on 16 September 1988.

The second assigned error is premised on the accused's conclusion that the trial court was biased in (a) stating in its decision that the defense did not submit any documentary evidence when in fact it did submit Exhibit "1", [24] a portion of the Investigation Report prepared by the Office of the Regional Inspector, PC/INP Regional Command 8 that refers to Entry No. 904 in the Police Blotter of Mayorga, Leyte -- which in turn states that the accused reported that he shot Lolito Rivero to death on 16 September 1988; (b) considering the aforesaid Investigation Report for the prosecution although the same was not offered in evidence; and (c) restricting the cross-examination of the prosecution witnesses, and in being liberal during the cross-examination of the defense witnesses.

In support of the third assigned error, the accused contends that the trial court took "hook-line-and-sinker and regarded as a gospel truth the testimony (sic) of the prosecution witnesses, specifically that of Rosalinda (sic) Adonis, the elder sister of the deceased Lolito Rivero." [25]

At the bottom of the first and third assigned errors is the issue of the credibility of the witnesses. In view thereof, both errors will be discussed jointly. One well-settled rule which this Court has consistently upheld and faithfully adhered to is that the issue of credibility is to be resolved primarily by the trial court because it is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial. [26] The trial court's findings on the matter of credibility are thus entitled to the highest degree of respect [27] and will not be disturbed on appeal in the absence of any showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. [28] Our careful review and evaluation of the testimonies of the witnesses for the prosecution as well as for the defense yield no cogent or compelling reason to alter the findings of fact made by the trial court.

Accused's insistence that the shooting took place on 16 September 1988 -- as testified to by Antonio Varona and as allegedly borne out by Exhibit "1" -- and not on 15 September 1988 as testified to by prosecution witnesses Rosalina Adonis and Carmen Navarro, deserves scant consideration. It is to be observed that Varona's testimony is based entirely on his recollection of the date he requested the victim to slaughter a pig. The judge who observed his demeanor while he was on the witness stand found the testimony to be unworthy of credit. The accused provides Us with no weighty reason to overturn the trial court's findings. As to Exhibit "1", a portion of page 5 of the Investigation Report of Sgt. Samuel Rosales, investigator of the Office of the Regional Inspector, submitted to the Regional Inspector General of the PC/INP Regional Command 8, [29] which reads:

"28. In the police blotter from Hqs. Mayorga INP, page number 117, Entry Number 904 dtd September 16, 1988 states that C2C Teofilo Kempis PC presently assigned as Hqs Svc Coy, HRECOM 8, reported to this station that he shot to death one alyas Lolito Rivero of an unknown resident (sic) at Brgy Talisay, Mayorga,

Leyte at more or less 3:00 o'clock in the afternoon of September 16, 1988. Said victim was known to be a suspect of some illegal activities (Kawat) on the said Brgy. He also reported that his parents were mistreated by said suspect. (Exh. "P-1")"[30]

it is quite evident that the accused himself was the informant. The trial court found that Entry No. 904, referred to in Exhibit "1", and Entry No. 905 in the Mayorga police blotter, do not state when Lolito Rivero was shot by the accused. Thereupon, on the basis of the testimonies of the witnesses for the prosecution, it concluded that the incident did in fact occur on 15 September 1988. The court's careful analysis reads:

"x x x While both entries 904 & 905 were entered on September 16, 1988, the accused who reported the killing of Lolito Rivero did not reveal in said entry No. 904 the exact date of the killing but the entry just stated that accused killed somebody at Bgy. Talisay, Mayorga, Leyte. The victim was Lolito Rivero. He also reported that his parents were maltreated by the said victim. The accused did not mention the date of the killing. To the mind of the Court, the date September 16, 1988 is the date accused reported the incident but not the date Lolito Rivero was killed which was on September 15, 1988. Again, as to Entry No. 905 reported by Corazon de Paz Catanoy, the exact date of the incident was not also given by her. The entry only states: 'September 1988', no day was mentioned by Corazon de Paz Catanoy as she left immediately after reporting the incident.

These entries Nos. 904 & 905 which are dated September 16, 1988 were used by the defense to destroy the credibility of the testimonies of prosecution witnesses Rosalina Adonis, Urbano Adonis and Carmen Navarro as to the real date of the incident as the incident happened on September 15, 1988, which testimonies the Court lends full faith and credence as these prosecution witnesses testified in a clear, concise and straight-forward manner and the Court finds no infirmity in their testimonies at the trial. The records of this case showed ample proof at the investigation made of these prosecution witnesses at the Headquarters, PC/INP Regional Command 8, Office of the Regional Inspector dated December 13, 1988 conducted at Camp September 21st movement at Palo, Leyte which showed from the affidavits of these prosecution witness (sic) that the killing of Lolito Rivero happened on 'September, 1988 15, 1500H' meaning to say in military parlance as September 15, 1988 at 3:00 o'clock in the afternoon, which date dovetails with the declarations of the prosecution witnesses."[31]

Then too, We find it rather strange that the accused merely assails the testimonies of Rosalina Adonis and Carmen Navarro only insofar as the date of the commission of the crime is concerned. He seems to have forgotten that two (2) other prosecution witnesses, namely Urbano Adonis[32] and Pascual Vega,[33] the latter being the Municipal Mayor of Mayorga at that time and who considers the accused as his grandson -- a claim not even rebutted by the latter -- collaborated the testimonies of Rosalina and Carmen. Accused further failed to remember that in his motion for reconsideration,[34] he attempted to assail Urbano's testimony and place Urbano himself in the same category as Rosalina and Carmen. Thus:

"Finally, and at the hazard of seeking a new trial, Rosalina Adonis, Urbano Adonis, and Carmen Navarro perjured themselves in open court by testifying that the incident took place on September 15, 1988."[35]

The accused's deafening silence in his Brief as regards Urbano's declaration signifies nothing less than the recanting of his previous imputation that Urbano had likewise perjured himself.

In an effort to save his theory that Lolito Rivero was shot on 16 September 1988, the accused now faults the trial court, by way of his fourth assigned error, for not giving him the opportunity to present the death certificate of the deceased Lolito Rivero, or at least consider the same in its decision. He asseverates that this certificate indicates that Lolito Rivero died on 16 September 1988. This claim is unfounded. Neither the records of the case nor the transcripts of the stenographic notes reveal that at any time before the case was submitted for decision, counsel for the accused had sought to offer in evidence the said death certificate or compel its production by compulsory process. It was only in his motion for the reconsideration of the adverse decision that he referred to the death

certificate, attaching to the said motion a hardly legible photocopy thereof as Annex "A".[36] A motion for reconsideration is not the proper procedural remedy for such a purpose. Hence, the same was correctly rejected by the trial court. This disposes of the fourth assigned error.

Coming back to the second assigned error, We find the three (3) grounds invoked in support thereof to be without any merit. In the first place, while it may be true that the trial court should not have taken into consideration that portion of the Investigation Report of the Office of the Regional Inspector (PC/INP Regional Command 8), which is not included in Exhibit "1", to bolster its conclusion that the incident in question did in fact occur on 15 September 1988, such an erroneous recourse did not in any way affect the veracity of its findings which were based principally on the testimonies of the witnesses given in open court and subjected to rigorous scrutiny during cross-examination by counsel for the accused. We, of course, agree with the accused that since only a portion thereof, Exhibit "1", was offered in evidence, the trial court should not have taken the rest into account in the formulation of its conclusions. Section 17, Rule 132 of the Revised Rules of Court provides:

"SEC. 17. When part of transaction, writing or record given in evidence, the remainder admissible. -- When part of an act, declaration, conversation, writing or record is given in evidence by one party, the whole of the same subject may be inquired into by the other, and when a detached act, declaration, conversation, writing or record is given in evidence, any other act, declaration, conversation, writing or record necessary to its understanding may also be given in evidence. (11a)"

Thus, in order that the rest of the Investigation Report may have been considered by the trial court, the prosecution should have offered the same in evidence[37] or moved that the entire document be received in evidence.[38] It bears stressing at this point that the Report attached to the records of Criminal Case No. 841 is only an uncertified plain copy which is actually annexed to an Order of the Provincial Prosecutor dated 31 March 1989.[39] This Order was not identified or offered in evidence. How it found its way into the records of the case was never explained. Hence, the trial court cannot even take judicial notice thereof. Nevertheless, as stated above, this error was of no consequence.

In the second place, the claim of an alleged restriction on the cross-examination of the prosecution witnesses is unfounded. A valid objection was interposed by the prosecutor on the ground of relevancy or materiality. After the court had sustained the objection, counsel for the accused did not further press his point. He did not even ask for a reconsideration of the ruling.

It having been conclusively established that the incident in question actually took place on 15 September 1988, accused's first defense of alibi may be appropriately looked into. Unfortunately, however, this defense provides him no relief. Prosecution witnesses Rosalina Adonis, Carmen Navarro and Urbano Adonis all saw him at the scene of the crime at the time of the killing. In fact, the first two were eyewitnesses to the actual shooting. Moreover, the accused further failed to prove that it was physically impossible for him to have been at the scene of the crime at the time the crime was committed. It is a fundamental juridical dictum that the defense of alibi cannot prevail over the positive identification of the accused.[40] For it to prosper, it is not enough that an accused show that he was somewhere else when the crime was committed; he must, more importantly, demonstrate that it was physically impossible for him to have been at the scene of the crime.[41] In the instant case, the trial court found that Barangay Cabacungan, Dulag, Leyte -- the place where the accused claims to have stayed in the afternoon of 15 September 1988 -- is only a few kilometers from Barangay Talisay, Mayorga, Leyte, the place where Lolito Rivero was killed. The municipalities of Dulag and Mayorga adjoin each other; considering that the accused has a motorcycle, it was then not physically impossible for him to have been in Talisay at the time of the killing.

The accused's second defense -- based on the theory that the incident occurred on 16 September 1988 -- was

erroneously considered by the trial court as self-defense. As earlier noted, however, the accused, via the manifestation of his counsel, had offered his oral testimony "to show that the incident happened under circumstances that could exempt or mitigate" his liability.[42] In other words, it would seem that the accused himself is not convinced that he had acted in self-defense. The exempting circumstance alluded to could, at most, be that prescribed in paragraph 4, Article 12 of the Revised Penal Code, viz.:

x x x

"4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it."

He claims that the trigger of his M-16 Armalite rifle "was accidentally pulled" by him while he and the victim were grappling for the possession of the said weapon. Thus:

"ATTY. TABAO:

Q Mr. Kempis, what was the purpose in your going to the house of Lolito Rivero?

A My purpose was to advise him that he should not be stealing and challenging people to a fight, because he is causing trouble to other persons.

Q When Corazon de Paz told you that Lolito Rivero was at the kitchen, what if anything did you do?

A I called Lolito Rivero to come out to the yard and Lolito Rivero came near, so I said to him: 'You, Lolito, do not steal again and do not be challenging people because you are causing them trouble.'

Q After telling Lolito Rivero, what did he say in reply?

A He said: 'I will not steal anymore, sir, because I have just been released from jail,' and so I said: 'Thank you.' Then when I turned my back he immediately grabbed my M-16 because at that time I was carrying my M-16.

Q Where was your M-16 located at that very moment?

A It was slung on my left shoulder.

Q Now, after Lolito Rivero grabbed your M--16 rifle, what happened?

A We grappled for the possession of the gun and in the process both of us fell down.

Q Now, after both of you fell down, what if anything happened?

A The trigger of the gun was accidentally pulled.

Q Now, who was hit after the trigger of the M16 was pulled?

A He was the one hit because I was holding the gun by the trigger, while he was holding the muzzle portion.

Q How many shots were fired accidentally?

A Three (3) successive shots."[43] (underscoring supplied for emphasis).

This allegation of an accidental pulling of the weapon's trigger hardly deserves even the most liberal or sympathetic consideration. As aptly observed by the trial court, the accused is a "trained soldier"[44] while the victim was "defenseless x x x who x x x was not even armed with a bolo or any weapon and, x x x untrained x x x in firearms x x x."[45] The characterization by the court of the victim was not even rebutted by the accused in his Brief. And even if we are to assume, for the sake of argument, that the victim did grab the weapon which was then slung over the accused's left shoulder, the latter -- if indeed he did not have murder in his heart -- could have

easily ward off the hand of the victim which was allegedly only holding the muzzle of the rifle. Instead of taking this defensive posture, however, the accused held on to the trigger, thereby manifesting an unequivocal intent to fire the gun. Furthermore, if indeed he had realized that the trigger was accidentally pulled, he, being a trained soldier, could have easily stopped the firing to prevent further injury to the victim, who was then already lying on the ground. Yet, the accused did not stop firing; as a result, the victim sustained five (5) gunshot wounds. The transcript of the stenographic notes of the accused's testimony partly records these facts, thus:

"COURT:

It is a fact that he pulled the trigger because he was holding the trigger portion, while the victim was holding the muzzle.

Let him answer.

WITNESS:

A That is true, because when he grabbed my gun, we grappled and he was able to hold the middle portion of the gun, while I was able to hold the handle or trigger portion and in the process of grappling I was already on top of him and that was when the trigger was accidentally pulled.

PROS. MERIN:

Q What was the position of the victim at that time when you were able to shoot him?

A Laying (sic) on the ground.

Q You mean you were standing up?

A Not yet, we were still grappling and both of us were still on the ground.

Q That means both of you were still on the ground when the three shots were made that hit the victim?

A Yes, we were still laying (sic) on the ground.

Q On the first shot, which portion of the body of the victim was hit?

A I was not sure what part of his body because I was apprehensive as I was fighting for my life.

Q How about the second shot, which portion of the body of the victim was it?

A I was not able to clearly take note.

Q But it is a fact now that it was the victim who was only hit?

A Yes, sir.

Q And he was hit while he was on the ground?

A He was hit while He was still on the ground and while I was also still on the ground."[46]

Finally, by his own Exhibit "1", it is quite obvious that the accused was not inspired by any noble mission as he sought the victim out in the afternoon of 15 September 1988 (or, as per his account, 16 September 1988). The accused's purpose in looking for the victim was to confront the latter for his alleged "illegal activities" and to avenge the wrong he had done to the accused's parents. Per said Exhibit "1", the accused reported to the Mayorga police station that "his parents were mistreated" by the victim. As this Court sees it, the accused wanted to impress upon the victim that he (accused) can enforce the law by himself and exact punishment for infractions thereof without recourse to the proper authorities. If his purpose in visiting the victim was merely:

"A x x x to advise him that he should not be stealing and challenging people to a fight, because he is causing trouble to other persons." [47]

it was not necessary for him to have brought a deadly weapon.

It is to be noted here that the accused does not even assign as an error in his Brief the trial court's alleged failure to appreciate in his favor the exempting circumstance which he had manifested immediately before testifying on direct examination, or consider his plea of "self-defense." He realizes only too well the futility of their invocation.

The trial court ruled that treachery attended the killing of Lolito Rivero; hence, the accused is guilty of Murder as defined and penalized in Article 248 of the Revised Penal Code. We agree. Lolito Rivero was unarmed. The attack was sudden, unprovoked, unexpected and done in a manner which directly and specially insured the execution of the act without any risk to the accused arising from the defense which the victim, then unarmed, may have made. [48]

No mitigating circumstance has been duly proven or even invoked in the appeal. The appealed decision must perforce be affirmed, except as to the indemnity which must be increased to P50,000.00 in accordance with the prevailing jurisprudence.

WHEREFORE, the appealed decision in Criminal Case No. 841 of Branch 10 of the Regional Trial Court of the Eighth Judicial Region is hereby **AFFIRMED** with the modification as to the indemnity, which is hereby increased to P50,000.00.

Costs against the accused.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Original Records (OR), 109-135; Rollo, 8-34. Per Judge Josephine K. Bayona.

[2] Id., 135; Id., 34.

[3] OR, 2-8. The copy attached to the records is not an original copy but an uncertified plain copy.

[4] Id., 1.

[5] OR, 33.

[6] Rosalina Adonis, Urbano Adonis, Pascual Vega, Carmen Navarro, Dionisio Capiyoc, Pfc. Naomi Cristino and Dr. Felipe Bugho, Jr.

[7] Francisca Riñosa, Antonio Varona, Dominador Kempis, P/Sgt. Alipio Lagahit, Pfc. Renato Canaleja and Corazon de Paz Catanoy (the common-law wife of the victim).

[8] Rollo, 78, et seq.

[9] Brief for Appellee, 2-3.

[10] TSN, 23 February 1990, 3.

[11] Rollo, 55, et. seq.

[12] Brief for the Accused, 3-4.

[13] TSN, 23 February 1990, 4.

[14] Id.

[15] TSN, 4 January 1990, 3-5.

[16] Rollo, 100-101.

[17] Id., 101.

[18] Id., 102.

[19] OR, 137-142.

[20] Id., 146-148.

[21] Id., 149-151.

[22] Id., 152.

[23] Rollo, 55, et seq.

[24] OR, 7.

[25] Brief for the Accused, 12.

[26] People vs. Garcia, 89 SCRA 440 [1979]; People vs. Bautista, 92 SCRA 465 [1979]; People vs. Abejuela, 92 SCRA 503 [1979]; People vs. Pido, 200 SCRA 45 [1991].

[27] People vs. Cabiling, 74 SCRA 285 [1976]; People vs. Marcina, 77 SCRA 238 [1977]; People vs. Sanchez, 199 SCRA 414 [1991].

[28] People vs. Gonzaga, 77 SCRA 140 [1977]; People vs. Oñate, 78 SCRA 43 [1977]; People vs. Ramos, 167 SCRA 476 [1988]; People vs. Payumo, 187 SCRA 64 [1990].

[29] OR, 2-8.

[30] OR, 7.

[31] OR, 128-129.

[32] TSN, 15 June 1989, 23-36.

[33] TSN, 29 June 1989, 1-13.

[34] OR, op. cit., 137-142.

[35] OR, 140.

[36] Id., 143.

[37] Santiago vs. Santos, 48 Phil. 567 [1925]; Orient Insurance Co. vs. Revilla, 54 Phil. 919 [1930].

[38] Matias vs. Alvarez, 10 Phil. 398 [1908].

[39] OR, unpaginated pages preceding page 2.

[40] *People vs. Mercado*, 97 SCRA 232 [1980]; *People vs. Clores*, 184 SCRA 638 [1990]; *People vs. Arceo*, 187 SCRA 265 [1990].

[41] *People vs. Brioso*, 37 SCRA 336 [1971]; *People vs. Diaz*, 55 SCRA 178 [1974]; *People vs. Baylon*, 57 SCRA 114 [1974]; *People vs. Salazar*, 58 SCRA 467 [1974]; *People vs. de Guzman*, 194 SCRA 618 [1991].

[42] TSN, 23 February 1990, 3.

[43] TSN, 23 February 1990, 6-7.

[44] OR,133-134.

[45] *Id.*

[46] TSN, 23 February 1990, 14-15.

[47] *Id.*, 6.

[48] Article 14(16), Revised Penal Code; *People vs. Ducusin*, 53 Phil. 280 [1929]; *People vs. Tumaob*, 83 Phil. 738 [1949]; *People vs. Maravilla, Jr.*, 167 SCRA 645 [1988]; *People vs. Batas*, 176 SCRA 46 [1989]; *People vs. Cempron*, 187 SCRA 248 [1990].

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