

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL TAGUBA Y REYNOSO AND JAIME TOLIBAS Y CAMPOSANO, ACCUSED,

G.R. Nos. 112792-93. October 06, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision dated November 8, 1993 of the Regional Trial Court of Pasay City, Branch 117, in Criminal Case No. 92-1382 finding appellant guilty of the crime of illegal possession of firearm and sentencing him to ten (10) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum, and in Criminal Case No. 92-1384, finding appellant and accused guilty of the crime of homicide with the use of an unlicensed firearm, sentencing them to the penalty of reclusion perpetua, and ordering them to indemnify the heirs of the victim the amount of P50,000.00, and to pay the costs.

Appellant Taguba is a 30 year-old security guard, residing in Dagat-Dagatan, Caloocan City, while accused Tolibas is a 33 year-old basin vendor residing in the same place. The victim, Amador Guina, was a 24 year-old marble mason.

For the State, the Office of the Solicitor General presented the following summary of the facts:[1]

"On September 1, 1992, at around 11:30 in the evening Amado Guina,[2] Joe Mari Tamargo and Peter Castro were on board a public utility jeepney along Taft Avenue (pp. 19-20, TSN, January 12, 1993) coming from Buendia bound for Manila. They had just come from their work in a marble works company at Megamall in EDSA (pp. 3-5, TSN, January 12, 1993). The jeepney was fully loaded with passengers (p. 8, *ibid*). Amado was seated on one side at the rear portion of the jeepney directly facing Joe Mari and Peter who were seated at the other side of the jeepney (p. 8, *ibid*). When the jeep was cruising near the San Isidro Church in Pasay City (p. 6, TSN, January 12, 1993), appellant, who was seated immediately next to the right of Amado, suddenly, announced a hold-up (p. 8, TSN, January 12, 1993) whispering 'do not move, this is a hold up' (p. 15, *ibid*). Appellant was holding a gun (p. 15, *ibid*) a caliber .38 revolver p. 13, *ibid*). Amado moved both of his hands as he wanted to resist (p. 15, *ibid*) and appellant, upon seeing this, immediately fired the gun at Amado (p. 10, *ibid*). A commotion ensued inside the jeepney during which time appellant and his companion, Jaime Tolibas, fled from the scene (p. 10, *ibid*).

Joe Mari and Peter brought the wounded Amado to the Philippine General Hospital using the same public utility jeepney they were riding on (p. 11, *ibid*). Amado, however, died along the way (p. 11, *ibid*); and was declared dead on arrival (DOA) at the said hospital (p. 10, TSN, February 17, 1993).

Meanwhile, Police Officer 1 Fernando Dominguez, a member of the Philippine National Police Special Action Force assigned at Fort Bonifacio, was on his way to his house on Villaroel St. in Pasay City after coming from the said camp (pp. 5-6, TSN, February 10, 1993). When he reached Sandejas St. corner Taft Avenue, he heard three consecutive gun shots (p. 6, *ibid*). Shortly thereafter he saw two men running towards him (pp. 6-7, *ibid*). He stopped the two, introduced himself as a police officer, ordered them to lie down and frisked both of them

while in that prone position (p. 7, *ibid*). He was able to confiscate a gun from appellant which he found tucked at the back of appellant's pants (p. 7, *ibid*). He was also able to confiscate from appellant and Tolibas several identification cards (Exhibits 'I', 'I-1', 'I-2') some of which were fake (pp. 7-8, *ibid*).

While he was deciding on whether to bring the appellant and Tolibas to Fort Bonifacio or Pasay City Police Station, he was told by some bystanders that there were police officers nearby so he decided to turn over appellant and Tolibas to the police officers (p. 9, *ibid*). He asked appellant and Tolibas to walk toward the direction of the police officers, taking the precaution to walk behind the two for he might not be recognized as a police officer, unnecessarily placing himself at risk (pp. 9-10, *ibid*).

Police Officer 3 Edgardo Cordova and Police Officer 3 Ernie Cabrega were along Lakas ng Bayan St. near the corner of Sandejas St. and Taft Avenue in Pasay City patrolling the area (p. 3, TSN, April 13, 1993). They saw Police Officer 1 Dominguez walking toward them pointing a gun at appellant and Tolibas in front of him. Aside from the gun pointed at appellant and Tolibas, Police Officer 1 Dominguez was also holding another gun in his left hand, its muzzle pointed downward (pp. 3-4, *ibid*). Upon reaching hearing distance, they were informed by Police Officer 1 Dominguez that he had arrested the two, the gun in his left hand being the gun he had confiscated and that the gun in his right hand was his own (p. 4, *ibid*). Police Officer 3 Cordova and Cabrega took the guns from Police Officer 1 Dominguez and asked the three to come with them to their headquarters (p. 4, *ibid*). At the headquarters, Police Officer Dominguez was able to produce documents supporting the legality of his possession of the gun while appellant and Tolibas were not, and on the basis of this fact, the two were turned over to the Investigation Division for the filing of the necessary charges (p. 5, *ibid*). The gun was turned over to the Investigating Officer, Senior Police Officer Elmer Puesta (p. 5, *ibid*). With the confirmation of the arrest, Police Officer 1 Dominguez was requested to execute an affidavit of arrest (Exhibit 'J') in connection with the incident (p. 11, TSN, February 10, 1993).

On September 2, 1992, the body of Amado was autopsied by the Medico-Legal Officer of the Western Police District, Dr. Manuel A. Lagonera. In his Post Mortem Findings (Exhibit 'L') he identified the cause of death as the gunshot wound at the right upper chest anterolateral, to wit:

'POST MORTEM FINDINGS

EXTERNAL FINDING:

- Gunshot wound, with the point of entry at the right upper anterolateral thorax, 49 inches from heel, 13.5 cms. from anterior midline, measuring 0.5x0.4 cms. and contusion collar measures 1x0.7 cms.

Trajectory-obliquely upwards, backwards crossing midline lacerating the upper lobe of the right lung (thru and thru), right sub-clavian artery, trachea and grazing the anterior portion of the body of 5th cervical vertebra. A copper coated slug was extracted at the basal portion in the left lateral side of the neck.

INTERNAL FINDINGS:

- Lacerations of organs and tissues as mentioned in the trajectory of the bullet with massive hemorrhage in the right thoracic cavity.

- The rest of the internal organs were markedly pale.

- Recovered from the stomach about 1/2 glassful of partially digested rice meal with meaty materials and without alcoholic odor.

CAUSE OF DEATH:

Shock sec. to a Gunshot Wound, Right Antero-Lateral Thorax.'

On September 3, 1992, Joe Mari learned from a newspaper that appellant and Tolibas were arrested near the scene of the shooting of his friend on the very same night the shooting happened (p. 12, TSN, January 12, 1993).

Together with Peter, he went to the Pasay City Jail to see appellant and Tolibas, and there he was able to confirm that the persons arrested by Police Officer Dominguez were the ones who shot Amado (p. 12., TSN, January 12, 1993). He then executed a sworn statement (Exhibit `H') on September 5, 1992 with SPO1 Pineda identifying appellant as the person who shot Amado, and Tolibas as appellant's companion during the attempted holdup (pp. 12-13, *ibid*)."

For the defense, appellant and accused presented the following version of the story:[3]

"On September 1, 1992, on or about 11:30 o'clock in the evening, herein accused-appellant, together with his co-accused, Jaime Tolibas, boarded a Monumento bound jeepney along Libertad Street, Pasay City, Metro Manila. The two (2) accused just came from accused Jaime Toliba's (sic) cousin, who was then residing somewhere in that vicinity. The passenger jeepney they were riding at the time, upon reaching the vicinity of Vito Cruz and Taft Avenue, Streets, a commotion broke out and the passengers riding the same all ran away from the jeep. The commotion was the result of a gun shot that was fired inside the passenger jeepney. A male person who is claimed to be a hold-upper fired at one of the passengers and the fatality was one Amador Guina. Both accused were among the passengers who ran away from the passenger jeepney upon hearing the gun shots. Running through an alley in the vicinity of Vito Cruz Street, both accused were stopped by a passing police officer, PNP Special Action Force, PO1 Fernando Dominguez detailed at Fort Bonifacio. A gun was alleged to have been confiscated from accused-appellant Raul Taguba. The two (2) accused including the gun alleged to have been confiscated were turned over by police officer Dominguez to a patrolling team of Pasay policemen named PO3's Cordora and Cabrega. Both accused were brought to the Pasay Police Station for investigation and SPO1 Elmer Puela of the said police station conducted the investigation including the alleged gun confiscated. Preliminarily, both accused are being charged only of usurpation of authority by police investigation (sic) SPO1 Elmer Puela because of the false ID's confiscated from them. They were then detained at the Pasay Police Station for two (2) days and no complainant appeared for that period of time. Accused Jaime Tolibas was inquested and charged with usurpation of authority while accused-appellant Raul Taguba and Jaime Tolibas were charged with illegal possession of firearm.

On September 5, 1992, an alleged eye witness, Joe Mari Tamargo Y Jumud appeared before the office of investigator SPO1 Elmer Puela of the Criminal Investigation Branch, Pasay Police Station, to give his statement of a hold-up incident which happened on September 1, 1992. Based on his statement, which is prosecution exhibit `H' and `H-1', he chanced upon and was able to read a news item in the Sept. 3, 1992 issue of People's Tonight. On page 5 to 8 thereof, he allegedly recognized a male person on a news caption `Policemen Arrest Policemen' and pointed to a male suspect then seated in front of him and the investigator, as the alleged gunman who killed his friend, Amador Guina, in a hold-up incident which happened on September 1, 1992.

Based on the late testimony of Joe Mari Tamargo, another case and information for `Homicide With The Use of An Unlicensed Firearm' was filed against the two (2) accused."

On September 4, 1992, appellant was charged with the crime of Illegal Possession of Firearms in Criminal Case No. 93-1382, which was raffled to the RTC-Pasay City, Branch 117. Said Information reads:[4]

"The undersigned Assistant City Prosecutor accuses RAUL TAGUBA Y REYNOSO of VIOLATION OF PRESIDENTIAL DECREE NO. 1866, committed as follows:

That on or about the 1st day of September, 1992, in Pasay, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Raul Taguba y Reynoso, with intent to use, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) Caliber .38 with three (3) live ammunition, without the necessary permit to possess the same.

Contrary to law.

Pasay, Metro Manila, September 3, 1992.

(SGD.) CONSTANTINO O. ORAA
Asst. City Prosecutor"

On September 7, 1992, after prosecution witness Tamargo surfaced, appellant and accused were additionally charged in Criminal Case No. 92-1384 with violation of Section 1, Paragraph 2 of Presidential Decree No. 1866 (Homicide with the Use of an Unlicensed Firearm), which was raffled to the RTC-Pasay, Branch 110. The Information states:[5]

"The undersigned Assistant City Prosecutor accuses RAUL TAGUBA Y REYNOSA AND JAIME TOLIBAS Y CAMPOSANO, of the crime of HOMICIDE WITH THE USE OF UNLICENSED FIREARM (SECTION 1, PARAGRAPH 2, OF PD. 1866), committed as follows:

That on or about the 1st day of September, 1992, in Pasay, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, without justifiable cause but with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, and shot one AMADOR GUINA with the use of an unlicensed firearm (caliber 38 revolver Smith and Wesson (Paltik) without Serial Number) on the vital part of his body, thereby inflicting upon the latter mortal wound which cause his death.

Contrary to law.
Pasay, Metro Manila.
07 September 1992.

(sgd.)
MERCEDES POSADA-LACAP
Asst. City Prosecutor"

Upon arraignment, appellant entered a plea of not guilty in the Illegal Possession case.[6] Appellant and accused likewise entered their respective pleas of not guilty to the charge of Homicide with the Use of an Unlicensed Firearm.[7] Upon discovery of the two pending cases in the different branches of the trial court, the defense moved for the consolidation of the two cases.[8]

During joint trial, the prosecution presented the following witnesses: (1) Joe Mari Tamargo, eyewitness to the incident, (2) PO1 Fernando Dominguez, who initially arrested both appellant and accused, (3) Dr. Manuel Lagonera, Medico-Legal officer of the Western Police District, who conducted the autopsy on the body of the victim, (4) PO3 Edgardo Cordova, (5) SPO2 Jose Villa Garcia, the policemen to whom PO1 Dominguez turned over appellant and accused, and (6) Marilou Guina, widow of the victim, who testified as to the damages sustained as a result of the death of her husband.

For the defense, appellant and accused both testified and interposed the defense of denial. Both protested that they were mere innocent passengers of the jeepney. Appellant testified that he jumped out of the jeepney when an unidentified man suddenly shot his seatmate. When accused saw appellant running away, he followed suit. The two were still running when they were accosted by four policemen, who frisked them and confiscated their identification cards.[9]

On November 8, 1993, the trial court rendered a consolidated decision,[10] disposing thus:

"WHEREFORE, in view of the foregoing, the Court finds the accused Raul Taguba y Reynoso GUILTY beyond reasonable doubt in Criminal case no. 92-1382, for violation of R.A. 1866, and sentences him to an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal as maximum, and to pay the

costs. It is also ordered that the firearm, subject matter of the offense, be turned over to the Firearms and Explosives Unit of the Philippine National Police for proper disposition.

Likewise, the Court in Criminal case no. 92-1384, the Court (sic) finds the accused Raul Taguba y Reynoso and Jaime Tolibas y Camposano GUILTY beyond reasonable doubt of homicide with the use of an unlicensed firearm defined and penalized under Section 1, paragraph 2, of P.D. 1866, and sentences them to reclusion perpetua; to indemnify the heirs of the deceased Amado Guina, jointly and severally the amount of P50,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. Both accused shall be credited in the service of their sentence with the full time during which they have undergone preventive imprisonment in accordance with Article 29 of the Revised Penal Code.

SO ORDERED."[11]

Only appellant interposed an appeal. He contends that the trial court erred in:[12]

- ... NOT FINDING THAT THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED-APPELLANT RAUL TAGUBA BEYOND REASONABLE IN THE TWO CASES.

- ... CONVICTING ACCUSED-APPELLANT RAUL TAGUBA FOR THE TWO CRIMES OF HOMICIDE WITH THE USE OF AN UNLICENSED FIREARM AND FOR VIOLATION OF PRESIDENTIAL DECREE NO. 1866 AND SENTENCING HIM THE PENALTY OF RECLUSION PERPETUA AND AN INDETERMINATE PENALTY OF TEN YEARS AND ONE DAY OF PRISION MAYOR AS MINIMUM TO FOURTEEN YEARS, EIGHT MONTHS AND ONE DAY OF RECLUSION TEMPORAL AS MAXIMUM.

In his brief, appellant assails the credibility of eyewitness Joe Mari Tamargo considering that it took him four (4) days after the incident to surface. Further, appellant bewails the fact that they were not in a police lineup when Tamargo identified them as the assailants. Appellant further assails the testimony of PO1 Dominguez considering that he executed his statement on September 1, 1992, but only signed it on September 3, 1992. Lastly, appellant claims that his conviction cannot stand since the firearm allegedly confiscated from him was never presented during trial.

In the appellee's brief, the Office of the Solicitor-General contends that the trial court did not err in its assessment of credibility of the witnesses, not having overlooked facts of substance or circumstances of significance which, if considered, would alter the result of the case. Further, the delay of a mere four days in the execution of Joe Mari's sworn statement has no bearing on his credibility. As to the delay in PO1 Dominguez' signing of his statement, he already explained that he made a temporary statement only because he was then about to go home. Further, there is no requirement that the firearm confiscated from appellant should in all instances be presented during trial. As explained by PO3 Cordora, the person who had custody of the firearm died after the incident, and the police officers could no longer locate the subject firearm.

An appeal in a criminal case throws the whole case wide open for review, and issues whether raised or not by the parties may be resolved by the appellate court.[13] Thus, we find that the issues in this case pertain to (1) the assessment of credibility of witnesses, (2) the correct characterization of the crime or crimes committed by appellant and accused, and (3) the propriety of their conviction for illegal possession of firearm in view of the non-presentation of the subject firearm in court.

As we have repeatedly held, the assessment of credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked,

misapprehended or misinterpreted.[14] We generally uphold and respect the trial court's appraisal since, as an appellate court, we do not deal with live witnesses but only the cold pages of a written record.[15] In this case, the identification of appellant and accused by PO1 Dominguez and eyewitness Tamargo was positive and categorical. Appellant and accused literally ran into PO1 Dominguez in their bid to escape the failed hold-up.[16] Tamargo who was seated in front of the victim actually saw appellant shoot at the victim with a .38 cal. firearm.[17] Further, Tamargo promptly surfaced after reading the news of the arrest in a local newspaper which showed the pictures of appellant and accused.[18] Hence, he could not even be faulted for the slightest delay in coming out as an eyewitness to the killing. Likewise, PO1 Dominguez satisfactorily explained the delay of three days in signing the affidavit of arrest. The foregoing considered, we find no cogent reason to depart from the factual findings of the trial court.

As to the crime or crimes committed by appellant, the peculiar circumstances of the case led to the filing of two cases, both involving illegal possession of firearms. The trial court convicted appellant of illegal possession in Criminal Case No. 92-1382 and both appellant and accused of the crime of illegal possession in its aggravated form under Criminal Case No. 92-1384. However, the passage of Republic Act No. 8294,[19] which lowered the penalties for illegal possession, has changed the legal scenario for appellant. Being beneficial to appellant who is not a habitual criminal, R.A. No. 8294 should be considered in his favor.[20] Under Section 1, third paragraph of R.A. No. 8294, and as interpreted by the Court in *People v. Molina*[21] and subsequent cases,[22] if homicide or murder is committed with the use of an unlicensed firearm, only the offense of homicide or murder is committed, and the use of the unlicensed firearm should be considered as an aggravating circumstance. An examination of the allegations in the Information reveals that all the elements of homicide were sufficiently alleged and proven during trial. However, the Information did not allege any of the circumstances which would qualify the crime to murder. Hence, appellant can only be convicted of the crime of homicide.

On the last issue, can the crime of illegal possession be proven even in case of non-presentation of the subject firearm? In cases involving illegal possession of firearms, the prosecution has the burden of proving the elements thereof, viz.: (a) the existence of the subject firearm; and (b) the fact that the accused who owned or possessed it does not have the corresponding license or permit to possess the same.[23] As to the first requisite, the existence of the subject firearm can be best established by the presentation of the firearm owned or possessed by the accused. However, there is no requirement that the actual firearm itself must be presented in court. In *People v. Orehuela*,[24] the Court held that the existence of the firearm can be established by testimony, even without the presentation of the said firearm. Thus, the non-presentation of the subject firearm is not fatal to the prosecution of an illegal possession case. In this case, two credible witnesses testified that they saw appellant in possession of the subject firearm. PO1 Dominguez testified that he recovered a .38 cal. firearm with no serial number from appellant. Prosecution witness Tamargo saw appellant shoot at the victim. These witnesses who are total strangers to appellant and accused had no false motive to testify against them. The positive testimonies, therefore, prevail over the bare denials of appellant and accused. Worth noting, both were seen right in the midst of the locus criminis. As to the second requisite, the non-existence of the license or permit was sufficiently proven by the Certification (Exh. "A") of Sr. Inspector Mario M. Espino of the Philippine National Police, Firearms and Explosives Office that appellant is not a licensed/ registered firearms holder of any kind and caliber.

The foregoing considered, the crime committed by appellant was homicide, with the use of the unlicensed firearm as an aggravating circumstance. Under Art. 249 of the Revised Penal Code, the penalty for homicide is reclusion temporal, which in view of the presence of one aggravating circumstance, should be imposed in its maximum period. Applying the Indeterminate Sentence Law, the minimum of the penalty should be taken from prision mayor. The lowering of the penalty, being favorable to the accused who did not interpose an appeal, should likewise be applied as to him.[25]

As to damages, the trial court correctly ordered appellant and accused solidarily to pay the heirs of the victim the amount of P50,000.00 as indemnity, pursuant to current jurisprudence.[26]

As to appellant, we find on review that he is liable for actual damages in the amount of P37,500.00, it being duly supported by receipts.[27] Likewise, based on the evidence, he is also liable in the amount of P850,440.00, for the loss of earning capacity of the victim.[28] Furthermore, considering that the widow testified as to the mental anguish she suffered on account of the death of her husband,[29] he is likewise ordered to pay the amount of P50,000.00 as moral damages. Finally, one aggravating circumstance having been proved, the award of exemplary damages against appellant in the amount of P20,000.00 is also in order.

WHEREFORE, the consolidated decision of the Regional Trial Court of Pasay City, Branch 117, in Criminal Case Nos. 92-1382 and 92-1384, is hereby MODIFIED. Pursuant to existing laws, the Information in Criminal Case No. 92-1382 is quashed and the judgment therein VACATED and SET ASIDE. Appellant RAUL TAGUBA y REYNOSO and accused JAIME TOLIBAS y CAMPOSANO, are found GUILTY only of the crime of HOMICIDE aggravated by the use of an unlicensed firearm in Criminal Case no. 92-1384. Appellant is hereby sentenced to the penalty of eleven (11) years, four (4) months, and one (1) day of prision mayor maximum as minimum, to seventeen (17) years, four (4) months, and one (1) day of reclusion temporal maximum as maximum, and ordered solidarily to pay the heirs of the victim the amount of P50,000.00 as indemnity. Although accused JAIME TOLIBAS y CAMPOSANO did not appeal his sentence, said penalty in this case being lower than that imposed by the trial court, shall now APPLY to his favor. In addition, appellant Taguba is hereby ordered to pay the heirs of the victim the amounts of P37,500.00 as actual damages, P850,440.00 as loss of earnings, P50,000.00 as moral damages, and P20,000.00 as exemplary damages.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 82-5-11.

[2] Spelled as "Amador" in the Certificate of Death.

[3] Rollo, pp. 31-A -32.

[4] Records, Criminal Case No. 92-1382, p. 1.

[5] Records, Criminal Case No. 92-1384, pp. 1-2.

[6] Supra, note 4 at 7.

[7] Supra, note 5 at 11.

[8] Id. at 20.

[9] TSN, May 18, 1993, pp. 3, 5; TSN, July 12, 1993, pp. 3, 8-9.

[10] Supra, note 4 at 170-179.

[11] Rollo, pp. 50-51.

[12] Id. at 33.

[13] *People v. Court of Appeals*, 308 SCRA 687, 703 (1999).

[14] *People v. Bermas*, 309 SCRA 741, 774-775 (1999).

[15] *People v. Patalin, Jr.*, 311 SCRA 186, 203 (1999).

[16] TSN, February 10, 1993, p. 6.

[17] TSN, January 12, 1993, pp. 8-10, 17.

[18] *Id.* at 12.

[19] AN ACT AMENDING THE PROVISION OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED "CODIFYING THE LAWS ON ILLEGAL/ UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF, AND FOR RELEVANT PURPOSES," which took effect on July 6, 1997; *Pastrano v. Court of Appeals*, 281 SCRA 287, 296 (1997).

[20] Art. 22, Revised Penal Code.

[21] 292 SCRA 742, 781 (1998).

[22] *People v. Castillo*, G.R. No. 131592-93, February 15, 2000, pp. 5-6; *People v. Mendoza*, 301 SCRA 66, 82 (1999), *People v. Feloteo*, 295 SCRA 607, 618 (1998); *People v. Narvasa*, 298 SCRA 637, 654 (1998).

[23] *People v. Lazaro*, G.R. No. 112090, October 26, 1999, p.8.

[24] 232 SCRA 82, 96 (1994).

[25] Section 11 (a), Rule 122, Rules of Court.

[26] *People v. Gonzales*, 311 SCRA 547, 565 (1999).

[27] Exhibits "F" and "G."

[28] The victim was 24 years old (Exhibit "E") at the time of his death. His wife testified that he was earning P190.00 a day as a marble mason, (TSN, January 4, 1993, p. 10), which amount we find to be reasonable. The formula for loss of earning capacity is life expectancy x (gross annual income - living expenses), with life expectancy = $\frac{2}{3}$ (80 - age at time of death), and living expenses = 50% of gross income. Applying said formula, we have $\frac{2}{3}$ (80 - 24) x (P45,600 - P22,800) = P850,440.00. See *People v. Nullan*, 305 SCRA 706 (1999).

[29] TSN, January 4, 1993, p. 5.

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