

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMENCIANO & OMENG; RICAFRANCA, EDSON
RICAFRANCA AND GEORGIE RICAFRANCA, ACCUSED-APPELLANTS.**

G.R. Nos. 124384-86. January 28, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from a decision[1] of the Regional Trial Court, Branch 41, Pinamalayan, Oriental Mindoro finding accused Romenciano "Omeng" Ricafranca, Edson Ricafranca and Georgie Ricafranca guilty of murder and sentencing each of them to "life imprisonment", and accused Edson and Georgie Ricafranca guilty of illegal possession of firearms and sentencing each of them to an indeterminate penalty of imprisonment of sixteen (16) years and one (1) day to twenty (20) years.

On separate dates[2], State Prosecutor Rodrigo B. Lorenzo filed three (3) informations against the accused-appellants in connection with the death of Alfredo dela Cruz - one (1) information charged all three (3) accused-appellants with murder, and the two (2) other informations were filed against accused-appellants Edson Ricafranca and Georgie Ricafranca for illegal possession of firearms.

The information for murder[3] alleges:

"That on or about the 6th day of January, 1993 in Mangat, Barangay Panikihan, Municipality of Pola, Province of Mindoro Oriental and within the jurisdiction of the Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill, with evident premeditation, treachery, taking advantage of superior strength, cruelty, and with the use of firearms and wooden club, did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of ALFREDO DELA CRUZ Y MAGPAYO, by shooting and clubbing him in different parts of his body, thereby inflicting upon him serious and mortal gunshot and other forms of wounds which were the direct and immediate cause of his death, to the damage and prejudice of his heirs in such amount as may be awarded under the provisions of the Civil Code.

"CONTRARY TO LAW."

The information for illegal possession of firearms[4] against accused-appellant Edson Ricafranca reads:

"That on or about the 6th day of January, 1993 in the Municipality of Calapan, Mindoro Oriental and within the jurisdiction of this Honorable Court, the above-named accused did then and there, wilfully, unlawfully and feloniously take, carry and have in his possession, custody and control, the hereinbelow described firearm:

One revolver, 'paltik', caliber .38 with Serial No. 650817

without any license or authority to possess and carry the said firearm.

"CONTRARY TO LAW."

The other information for illegal possession of firearms,[5] charging accused-appellant Georgie Ricafranca reads:

"That on or about the 6th day of January, 1993 in the Municipality of Pola, Mindoro Oriental and within the jurisdiction of this Honorable Court, the above-named accused did then and there, wilfully, unlawfully and feloniously take, carry and have in his possession, custody and control the hereinbelow described firearms:

"(1.) Magnum Revolver, Caliber .22 with Serial No. 121236; and

"(2.) Llama pistol, Caliber .22 with Serial No. 370365 without any license or authority to possess and carry the said firearm.

"CONTRARY TO LAW."

At their arraignment, the accused-appellants pleaded not guilty to the informations.[6]

On March 26, 1993, the three (3) cases were consolidated[7] before the Regional Trial Court, Branch 41, Pinamalayan, Oriental Mindoro where the murder case against the three (3) accused-appellants was pending. Trial ensued accordingly.

The prosecution's version[8] of the killing may be related as follows:

Sometime prior to the incident in question, Alfredo dela Cruz, an ex-policeman, hired the jeep of accused-appellant Edson Ricafranca for a fee. Days later, or on January 4, 1993, Joel Tagulalap, accused-appellant Edson Ricafranca's conductor, went to the house of Nelia Nambio to collect the P500.00 that Alfredo dela Cruz owed for the rental of the jeep. Nelia Nambio gave him said amount.

The next day (January 5), Alfredo dela Cruz, accompanied by the Barangay and Kabataang Barangay Chairmen, arrived at Nelia Nambio's residence and loudly complained about the high rental rates charged by accused-appellant Edson Ricafranca: "Sobra nang maningil si Edson. Sobrang suwapang si Edson, lumusot na ang ulo at pati na ang katawan ay gusto pa rin palusutin. Anak siya ng kaputaputahan!" After saying these fiery words, Alfredo dela Cruz left. About fifteen (15) minutes later, a fuming accused-appellant Edson Ricafranca arrived. He handed over to Nelia Nambio the P500.00 he collected previously and instructed her to return the money to Alfredo dela Cruz. Later in the evening, at around 7:00 p.m., accused-appellant Edson Ricafranca, with a handgun tucked in his right waist and a hand grenade on the left hand, arrived at the house of Rodolfo Madrigal to drink water. Rodolfo Madrigal even quipped that accused-appellant Edson Ricafranca seemed headed for war. Accused-appellant Edson Ricafranca said that he was waiting for Alfredo dela Cruz. Moments later, accused-appellant hailed a tricycle and asked the driver if he had seen Alfredo dela Cruz. Accused-appellant Edson Ricafranca returned to Rodolfo's house, asked for another glass of water and then left.

At around 8:30 a.m. of January 6, 1993, accused-appellant Edson Ricafranca flagged down a jeep which was plying the Pola-Socorro road. Alfredo dela Cruz was inside the vehicle. Accused-appellant Edson Ricafranca dragged Alfredo dela Cruz out of the jeep and punched the latter on the mouth. Alfredo dela Cruz ran for safety but accused-appellant Georgie Ricafranca appeared and blocked his path. Accused-appellant Georgie Ricafranca then drew his firearm and fired at Alfredo dela Cruz, but it was accused-appellant Edson Ricafranca who was hit on the right arm. Alfredo dela Cruz darted away while accused-appellants Edson and Georgie Ricafranca gave chase and kept firing at Alfredo dela Cruz. When the fleeing Alfredo was in front of the house of Filipina Luha, accused-appellant Romenciano Ricafranca, the father of accused-appellants Edson and Georgie Ricafranca, emerged from said house. Accused-appellant Romenciano Ricafranca positioned himself at the left side of Alfredo dela Cruz, held the latter's wrist over his neck while accused-appellant Romenciano Ricafranca's right arm embraced Alfredo dela Cruz's waist. Accused-appellant Edson Ricafranca then aimed his gun at the helpless Alfredo dela Cruz, but accused-appellant Romenciano Ricafranca cautioned accused-appellant Edson Ricafranca

as Romenciano Ricafranca might be the one hit. Alfredo dela Cruz struggled from accused-appellant Romenciano Ricafranca's grip and was able to go behind the latter. Accused-appellant Edson Ricafranca fired his gun, hitting accused-appellant Romenciano Ricafranca instead on the right arm. Alfredo dela Cruz scurried towards an uninhabited house. Accused-appellant Romenciano Ricafranca took his gun and fired three (3) shots at Alfredo dela Cruz. Alfredo dela Cruz dropped into a canal and, in a kneeling position, begged for his life. Heedless, accused-appellant Edson Ricafranca took the holster of the gun from accused-appellant Georgie Ricafranca and tucked it in Alfredo dela Cruz' waist. Accused-appellant Edson Ricafranca then struck Alfredo dela Cruz' face with the butt of the gun, fired at Alfredo dela Cruz, kicked him and fired at him again. Insatiated still, accused-appellant Edson Ricafranca whacked Alfredo dela Cruz' face with a piece of wood. Accused-appellant Georgie Ricafranca approached and fired at the already fallen Alfredo dela Cruz. Accused-appellants Edson and Romenciano Ricafranca rode a jeep and left, while accused-appellant Georgie Ricafranca remained at the scene for a while gazing at the lifeless body of Alfredo dela Cruz. Alfredo dela Cruz' cadaver was later brought to the house of Filipina Luha.

For its part, the defense claimed that it was Alfredo dela Cruz who went on a shooting rampage.[9] While accused-appellant Edson Ricafranca was busy loading ice blocks in his banca near Filipina Luha's house at around 8:00 a.m. of January 6, 1993, Alfredo dela Cruz alighted from a jeep and called him. Alfredo dela Cruz berated accused-appellant Edson Ricafranca: "Ikaw na putang ina mo, nariyan ka pala. Mahal ang pagkakasingil mo bakit sobra ang pasahe sa pag-aarkila ng jeep mo!" Affronted, accused-appellant Edson Ricafranca punched Alfredo dela Cruz on the mouth. Alfredo dela Cruz then drew his gun and shot accused-appellant Edson Ricafranca on the right wrist. Accused-appellant Edson Ricafranca fell in a kneeling position. Accused-appellant Romenciano Ricafranca arrived and upon seeing his son Edson Ricafranca bleeding, asked Alfredo dela Cruz what happened. "Ikaw pa!", Alfredo dela Cruz replied, and then he fired at accused-appellant Romenciano Ricafranca who was hit on the upper portion of his left arm. SPO2 Teresito Bautista arrived and tried to pacify Alfredo dela Cruz. Instead, Alfredo dela Cruz aimed his gun at SPO2 Bautista which prompted the latter to repeatedly fire at Alfredo dela Cruz. It so happened that a jeep driven by accused-appellant Georgie Ricafranca passed by the crime scene and, upon seeing his wounded father Romenciano Ricafranca and brother Edson Ricafranca, accused-appellant Georgie Ricafranca loaded the two in the jeep and headed for the hospital in Pinamalayan.

The trial court rejected the defense's version and convicted the accused-appellants on the basis of the prosecution evidence. On October 19, 1995, the trial court rendered decision ruling that treachery and cruelty qualified the killing to murder, and that the prosecution has sufficiently established that the accused-appellants Edson and Georgie Ricafranca did not have the license or authority to possess and carry the firearms they used in the killing of Alfredo dela Cruz. The dispositive portion of the trial court's decision thus reads:

"WHEREFORE, the Court finds all three (3) accused Romenciano, Edson and Georgie, all surnamed Ricafranca GUILTY beyond reasonable doubt of the crime of MURDER defined and penalized in Article 248 of the Revised Penal Code and sentences each of said accused to life imprisonment. All accused are likewise ordered to pay, jointly and/or severally, the heirs of the deceased Alfredo dela Cruz, the amount of TWO HUNDRED THOUSAND (P200,000.00) Pesos by way of indemnity and as actual and moral damages.

"The Court likewise finds accused Edson Ricafranca guilty beyond reasonable doubt of the crime of illegal possession of one (1) paltik, Cal. .38 with Serial No. 650817 in violation of Section 1 of P.D. No. 1866 and sentences him to suffer imprisonment of sixteen (16) years and one (1) day to twenty (20) years.

"And finally, the Court likewise finds accused Georgie Ricafranca guilty beyond reasonable doubt of the crime of Illegal Possession of one (1) Magnum revolver Cal. .22 with Serial No. 370365 in violation of Sec. 1 of P.D. No. 1866 and hereby sentences him to suffer imprisonment of sixteen (16) years and one (1) day to twenty (20)

years.

"SO ORDERED." [10]

Hence, this appeal.

Accused-appellants impute to the trial court the following errors:

"I.

"The Honorable Court a quo erred in disregarding the fact that the evidence of the prosecution did not overcome the time-honored presumption of innocence of the accused in criminal cases.

"II.

"The court a quo erred in holding that the three accused-appellants are guilty of the crime of Murder.

"III.

"The court a quo erred in holding accused-appellants Edson Ricafranca and Georgie Ricafranca guilty of illegal possession of firearm, respectively.

We find the guilt of accused-appellants of the murder duly proved.

The first two (2) assignments of errors raised by the accused-appellants assailed the trial court's appreciation of the evidence which validated the prosecution's detailed account of Alfredo dela Cruz' death in the morning of January 6, 1993.

Being in the best and unmatched position to discern the behavior of the witnesses and to sift the truth from the incredible tales, this Court respects the observation of the trial court that none of the prosecution eye witnesses, SPO2 Bautista, Flynn Rivera, Filipina Luha and Nelia Nambio appeared to be ill-motivated so as to implicate the accused-appellants to the crime.[11] On the other hand, the trial court described the defense version as having "all the earmarks of falsehood," "incredible" and "weak and implausible." [12] We thus advert to that all-too familiar rule that findings of fact of the trial court, especially its assessment on the credibility of witnesses, are not to be disturbed on appeal. The trial court is in a better position than the appellant court to properly evaluate testimonial evidence because of their unique opportunity to directly observe the witness' demeanor, conduct, deportment and manner of testifying.[13]

Consequently, accused-appellants' denials and attempt to pin down SPO2 Teresito Bautista as the person who repeatedly fired at Alfredo dela Cruz, crumble in light of the clear, consistent and unequivocal eyewitness accounts identifying them as Alfredo dela Cruz' killers. Mere denials by the accused-appellants, who admitted their presence at the crime scene, can not prevail against the categorical declarations of the prosecution witnesses that it was they who shot Alfredo dela Cruz.[14] Like the defense of alibi, a denial is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters that the accused-appellants were at the scene of the incident and were the victim's assailants and perpetrators of the crime.[15]

Conspiracy among the accused-appellants to kill Alfredo dela Cruz was present. Conspiracy need not be proved by direct evidence, it may be inferred from the conduct of all the accused before, during and after the commission of the crime.[16] It may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.[17] The community of design and action among the accused-appellants is apparent when accused-appellants Georgie and Romenciano Ricafranca made their respective appearances during the assault

initiated by accused-appellant Edson Ricafranca and aided the latter in rendering Alfredo dela Cruz defenseless and vulnerable to their deadly attack.

Treachery also attended the killing. Alfredo dela Cruz was unarmed and was begging for his life when he was shot by accused-appellant Edson. The stand taken by Alfredo dela Cruz obviously posed no risk to the accused-appellants. We have previously held that treachery is present where the victim was shot while his hands were raised pleading for his life.[18]

We disagree, however, with the trial court's finding of cruelty. The test for determining the presence of cruelty is whether the accused deliberately and sadistically augmented the victim's suffering. Consequently, there must be proof that the victim was made to agonize before he was killed.[19] The fact that accused-appellant Edson clobbered and kicked Alfredo before firing at him does not, to our mind, convincingly show sadism intended to prolong Alfredo dela Cruz' agony before he was finally killed.

With respect to the charge of illegal possession of firearms, we acquit accused-appellants Edson and Georgie Ricafranca, following the Court's ruling in "People vs. Bergante"[20] as applied once again in the more recent case of "People vs. Guillermo Nepomuceno, Jr." [21] In "Bergante" and "Nepomuceno," the Court gave retroactive effect to the amendment introduced by R.A. No. 8294 (which took effect on June 6, 1997)[22] on P.D. No. 1866 to the effect that if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance and shall no longer be separately punished. The "Nepomuceno" case reiterated the explanation in "Bergante," to wit:

"The violation of P.D. No. 1866 should have been punished separately conformably with our ruling in People vs. Quijada. Nevertheless, fortunately for appellant Rex Bergante, P.D. No. 1866 was recently amended by Republic Act No 8294, otherwise known as 'An Act Amending the Provisions of Presidential Decree No. 1866, as Amended.' The third paragraph of Section 1 of said Act provides that 'if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.' In short, only one offense should be punished, viz., either homicide or murder, and the use of the unlicensed firearm should only be considered as an aggravating circumstance. Being favorable to Rex Bergante, this provision may be given retroactive effect pursuant to Article 22 of the Revised Penal Code, he not being a habitual criminal."

As both accused-appellants Edson and Georgie Ricafranca do not appear to be habitual criminals, they also stand to benefit from the retroactive application of the amendment introduced by R.A. No. 8294 on P.D. No. 1866.

However, the trial court erred in imposing on accused-appellants the penalty of "life imprisonment" for the crime of murder. As to accused-appellant Romenciano, the imposable penalty is reclusion perpetua under Article 248 of the Revised Penal Code, in the absence of any aggravating or mitigating circumstance that can be appreciated against or favoring him. As to accused-appellants Edson and Georgie Ricafranca, the imposable penalty is also reclusion perpetua notwithstanding the fact that their use of unlicensed firearms is an aggravating circumstance that would elevate the penalty to death, inasmuch as the death penalty stood abolished at the time of the commission of the murder.

At this juncture, we reiterate that reclusion perpetua and life imprisonment are not synonymous penalties. They are distinct in nature, in duration and in accessory penalties.[23] In "People vs. Nang,"[24] the Court distinguished the two penalties in this wise:

"The Code (Revised Penal Code) does not prescribe the penalty of 'life imprisonment' for any of the felonies therein defined, that penalty being invariably imposed for serious offenses penalized not by the x x x Code but by the special law. Reclusion perpetua entails imprisonment for at least (30) years, after which the convict becomes eligible for pardon. It also carries with it accessory penalties, namely: perpetual special

disqualification, etc. It is not the same as 'life imprisonment' which, for one thing, does not carry with it any accessory penalty, and for another, does not appear to have any definite extent or duration."

We also have to modify the amount of P200,000.00 which the trial court awarded "by way of indemnity and as actual and moral damages." Actual damages cannot be awarded in the absence of receipts to support the same, in line with the rule that actual damages cannot be allowed unless supported by evidence in the record.[25] The Court can only give credence to actual expenses supported by receipts and which appear to have been genuinely expended in connection with the victim's death.[26] Moral damages cannot be given, too, since there is no legal basis therefor,[27] either testimonial or documentary. Only P50,000.00 by way of death indemnity can be awarded without need of evidence proving the same under the circumstances.

WHEREFORE, the judgment appealed from is hereby MODIFIED. In Criminal Case No. P-5046, the conviction of accused-appellants Edson, Georgie and Romenciano, all surnamed Ricafranca, for murder is AFFIRMED. Each of them shall suffer the penalty of reclusion perpetua, with all its accessory penalties, and they shall be solidarily liable to pay the heirs of Alfredo dela Cruz the amount of P50,000.00 as death indemnity.

In Criminal Case Nos. C-3803 and P-5075 for illegal possession of firearms, accused-appellants Edson and Georgie Ricafranca are ACQUITTED of said charges.

With costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In Crim. Cases Nos. P-5046, P-5975, and C-3803, decision , penned by Judge Antonio R. Quizon, Rollo, pp. 156-184.

[2] The information for murder was filed on February 8, 1993. The information for illegal possession of firearms against accused-appellant Edson Ricafranca was filed on February 8, 1993. The information for illegal possession of firearms against accused-appellant Georgie Ricafranca was filed on March 15, 1993.

[3] Criminal Case No. P-5046.

[4] Criminal Case No. C-3803.

[5] Criminal Case No. P-5075.

[6] In Criminal Case No. P-5046 for murder, the (3) accused-appellants were arraigned on March 4, 1993; in Criminal Case No. C-3803 for illegal possession of firearms, accused-appellant Edson Ricafranca was arraigned on May 11, 1993; and in Criminal Case No. P-5075 for illegal possession of firearms, accused-appellant Georgie Ricafranca was arraigned also on May 11, 1993.

[7] Records of Criminal Case No. C-3803, p. 33.

[8] TSN, May 11, 1993, pp. 5-32; TSN, May 13, 1993, pp. 3-51; TSN, June 10, 1993, pp. 3-32; TSN, June 10, 1993, pp. 32-53; TSN, June 11, 1993, pp. 3-52; TSN, July 8, 1993, pp. 2-37.

[9] TSN, February 28, 1995, pp. 11-24; TSN, March 16, 1995, pp. 2-9; TSN, March 17, 1995, pp. 4-11; TSN, pp. 11-22; TSN, March 17, 1995, pp. 23-32.

[10] Rollo, p. 76.

[11] RTC Decision, p. 20.

[12] RTC Decision, pp. 23-24.

[13] People vs. Maramara, G. R. No. 110994, October 22, 1999; People vs. Mangahas, G. R. No. 118777, July 28, 1999; People vs. Tomolin, G. R. No. 126650, July 28, 1999; People vs. Degamo, G. R. No. 129535, July 20, 1999; People vs. Benito, G. R. No. 128072, February 19, 1999; People vs. Gargar, 300 SCRA 542 [1998] ; People vs. Abria, 300 SCRA 556[1998]; People vs. Victor, 292 SCRA 186[1998].

[14] People vs. Bustos, 171 SCRA 243, 249 [1989].

[15] People vs. Heredia, G. R. No. 110001, July 28, 1999; People vs. Baniel, 275 SCRA 472 [1997].

[16] People vs. Degamo, G. R. No. 129535, July 20, 1999; People vs. Antonio, G. R. No. 118311, February 19, 1999.

[17] People vs. Andales, G. R. No. 130637, August 19, 1999; People vs. Botona, G. R. No. 115693, March 17, 1999.

[18] People vs. Jutie, 171 SCRA 586, 595 [1989] People vs. Lebumfacil, 96 SCRA 573 [1980].

[19] People vs. Panida, G.R . Nos. 127125 & 138952, July 6, 1999; People vs. Domantay, G. R. Nos. 130612, May 11, 1999.

[20] 286 SCRA 629 [1998].

[21] G. R. No. 130800, June 29, 1999. En Banc Decision penned by Chief Justice Hilario G. Davide, Jr.

[22] Amending the Provisions of Presidential Decree No. 1866, as amended.

[23] People vs. Nang, 289 SCRA 16, 34 [1995] People vs. Magalong, 313 Phil. 823 [1995] People vs. Nialda, 289 SCRA 521, 535 [1998], citing People vs. Miranda, 262 SCRA 351 [1996] and People vs. Compendio, Jr., 258 SCRA 254 [1996]; People vs. Timon, 281 SCRA 577, 598 [1997]; People vs. Layno, 264 SCRA 558, 577 [1996].

[24] 289 SCRA 16, 34-35 [1998], citing People vs. Magana, 259 SCRA 380 [1996] and People vs. Mobe, 81 Phil. 58 [1948].

[25] People vs. Nialda, supra, Note 23.

[26] Fuentes, Jr. vs. Court of Appeals, 253 SCRA 430 [1996].

[27] People vs. Maramara, G. R. No. 110994, October 22, 1999; People vs. Sequiño, 264 SCRA 79 [1996].

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