

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLIE ALAGON AND DOMINADOR RAFAEL, ACCUSED-APPELLANTS.

G.R. Nos. 126536-37. February 10, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Pasig City (Branch 156), finding accused-appellants Carlie Alagon (ALAGON) and Dominador Rafael (RAFAEL) guilty of two counts of murder and sentencing them as follows:

In Criminal Case No. 104510, to suffer the penalty of reclusion perpetua; to proportionately indemnify the heirs of the deceased Elarde Magno y Fernando in the sum of Fifty Thousand Pesos (50,000.00); to pay the sum of Eighty-Two Thousand Pesos (P82,000.00) as expenses incident to the burial and the further sum of One Hundred Thousand Pesos (P100,000.00) by way of moral and exemplary damages all without subsidiary imprisonment in case of insolvency, and to pay the costs.

In Criminal Case No. 104502, to suffer the penalty of reclusion perpetua; to proportionately indemnify the heirs of the deceased Isidro Barcelona y Pasman in the sum of fifty Thousand pesos (P50,000.00); to pay the sum of One Hundred Forty Thousand Pesos (P140,000.00) as expenses incident to the burial and the further sum of One Hundred Thousand Pesos (P100,000.00) by way of moral and exemplary damages all without subsidiary imprisonment in case of insolvency, and to pay the costs.[2]

Two separate Informations were filed against ALAGON and RAFAEL, both dated February 2, 1994, charging them with two counts of murder for the deaths of Elarde Magno and Isidro Barcelona, thusly:

Crim. Case No. 104501

"That on or about the 17[th] day of January 1994 in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, armed with armalite rifle (M-16), with intent to kill and with evidence (sic) premeditation and treachery, did, then and there, willfully, unlawfully and feloniously shoot with said armalite rifle (M-16) one Elarde Magno, hitting him the (sic) different part of his body thereby inflicting upon the latter gunshot wounds which directly caused his death.

CONTRARY TO LAW."[3]

Crim. Case No. 104502

"That on or about the 17[th] day of January 1994 in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, armed with armalite rifle (M-16), with intent to kill and with evidence (sic) premeditation and treachery, did, then and there, willfully, unlawfully and feloniously shoot with said armalite rifle (M-16) one Isidro Barcelona, hitting him on the different part of his body thereby inflicting upon the latter gunshot wounds which directly caused his death.

CONTRARY TO LAW."[4]

Upon arraignment, accused-appellants ALAGON and RAFAEL entered a plea of not guilty. Thereafter, the two cases were heard jointly. As mentioned at the outset, the trial court rendered a judgment of conviction on September 13, 1996. In view of the penalty imposed, a joint appeal was filed directly with this Court, with the following assignment of errors:

I.

THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT DOMINADOR RAFAEL CONSPIRED WITH CO-ACCUSED-APPELLANT CARLIE ALAGON, ON WHICH BASIS APPELLANT RAFAEL WAS FOUND GUILTY OF TWO (2) COUNTS OF MURDER.

II.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT DOMINADOR RAFAEL GUILTY BEYOND REASONABLE DOUBT OF TWO (2) COUNTS OF MURDER.

III.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT CARLIE ALAGON GUILTY BEYOND REASONABLE DOUBT OF TWO (2) COUNTS OF MURDER.[5]

The case for the prosecution is woven mainly on the testimony of Remedios Punzalan which was summarized by the trial court as follows:

"At Purok 14, South Daang Hari, Bagong Tanyag, Taguig, Metro Manila, a certain property occupied by many residents, including her, is being claimed by Aida Macaraig and Luis Posadas. When these alleged owners wanted to close this "Posadas property", the residents thereat objected.

The alleged owners of the "Posadas property" posted several security guards within the area beginning on December 1, 1993. Two (2) meters outside of the boundary of the "Posadas property", the residents held protest vigils in two (2) groups, one at daytime, another group at night. They put up banners seeking help from the government and with the words "Alagon and Neri out!" among others.

All four (4) accused are among the security guards of the FEMJEG Security Agency who were detailed at the "Posadas property" beginning on December 1, 1993.

In the evening of January 17, 1994, from 7 o'clock, she stayed at the site where the vigil was being held. At about 10:30 PM, she left.

After fifteen minutes, accompanied by her husband, Jess Punzalan, and two other men, Isidro Barcelona and Elarde Magno, she came back to the site of the vigil to join Rebecca Puseran, Erlina Barcelona, Belen Juarez, a niece of Isidro Barcelona, and two (2) boys.

Her husband, Jess, Isidro Barcelona, and Elarde Magno soon left the vigil site and headed out towards the gate of the "Posadas property". Then she saw the three (3) of them stop to sit and engage in conversation. This was about fifty (50) meters from the vigil site.

She could clearly see these three (3) men because the place was lighted by "sulo". A "sulo" is actually a bottle of gin, which they had instead filled with kerosene and stuck with a piece of cloth to serve as its wick and wrapped with foil at the top. This "sulo" gives out a very bright light and they had about five (5) of these aligned at the vigil site and one (1) near the gate of the "Posadas property".

Meanwhile, accused Rafael had approached the vigil site asking them to put out their "sulo". When they did not oblige, accused Rafael blew out the "sulo" by himself and hurriedly left.

She re-lighted the "sulo" but somebody threw a stone at it. So, again the "sulo" was put off.

Simultaneously with the throwing of the stone at the "sulo", someone shouted, "Dapa!" (duck).

Instead of ducking on the ground, she looked at where the voice came from (which was where her husband, Isidro Barcelona, and Elarde Magno, were sitting at the moment) and saw accused Alagon, wearing a light blue vest over a white t-shirt and white short pants, standing between Isidro Barcelona and Elarde Magno and holding an armalite.

She saw accused Alagon, whom she identified in open court, first shoot Isidro Barcelona, then Elarde Magno, killing both of them. She was so shocked that she could not move from her place even when she saw that accused Alagon was facing towards the women holding the vigil and aiming his gun at them. Only after her women companions started to shout did she regain her composure and she ran to the only place she thought was where she can safely hide – towards accused Alagon, such that their shoulders even bumped each other's."[6]

The other prosecution witness, Celedonio Arandela, Jr., also a resident at Purok 14, Daang Hari, Bagong Tanyag, Taguig, Metro Manila, did not witness the actual shooting, but nevertheless bolstered the testimony of Remedios Punzalan. His testimony was summarized by the trial court as follows:

At about 11 o'clock in the evening of January 17, 1994, coming from the house of a friend, he stopped to converse with Isidro Barcelona, Elarde Magno, and Jess Punzalan, who were fifty (50) meters away from where the vigil was taking place. While talking with these three (3), he noticed accused Rafael put off one (1) of the four (4) lights at the vigil site.

Sensing something amiss, he walked about thirty (30) meters away from the three (3) men and stayed under an "aralisis" tree. He was about to sit down when he heard somebody shout: "Dapa, walang kikilos."

Having had previous occasions when accused Alagon would poke his gun at him for reasons he does not know, he recognized the voice of the one who shouted: "Dapa, walang kikilos" as that of accused Alagon's.

Then he heard more or less seven (7) gunshots fire.

x x x x x x x x.

x x x x x x x x.

He went back to where he had earlier on been talking with the three (3) men and heard somebody calling out for help. Together with some other people who came to help, he went to the place of the shooting incident and saw Elarde Magno and Isidro Barcelona lying prostrate on the ground.

x x x x x x x x."[7]

Accused-appellants ALAGON and RAFAEL had denial for their defense. ALAGON's testimony was summarized by the trial court as follows:

He is a security guard connected with the FEMJEG Security and Allied Services. He was assigned as supervising security guard at the "Posadas property" and on January 17, 1994, his tour of duty was from 7 PM to 7AM. His service firearm on that date was a .38 caliber.

The "Posadas property" that he was guarding along with other security guards is more or less five (5) hectares. There were four (4) guard posts at this property; one in the clubhouse where the radio control is; one at tower 1; another at tower 2; and still another, a new post at the middle of the property.

The new post is more or less 200 meters away from the clubhouse and around 10 meters or less from an opening in the property which is used by residents for passing through.

At around 11 PM of January 17, 1994, while he was alone at the clubhouse, monitoring the radio, he heard about ten (10) successive gunshots coming from the side of the new post but paid no attention to it because it was far from their area. At that time, security guards Cruz and Lamera were at tower 1. At tower 2 were security guards Cabrera and Herrera. Security guard Cesar Patacsil was at the new post.

He received a call on the radio from security guard Patacsil asking him to come over at the "labasan" because there was a commotion outside the "Posadas property", in the open fence which is about three (3) meters wide. He obliged, but first passed by the barracks inside the clubhouse to have somebody go with him to the area which was dark. Security guard Rafael, one of the accused in these cases and who was off-duty at that time, went with him and the two (2) of them proceeded to the post of security guard Patacsil.

x x x.

Reaching the new post, he inquired from security guard Patacsil what was happening and the latter told him that there was a commotion outside which he feared could reach inside.

He thus radioed the security guards at the two (2) towers advising them to secure the area.

From the new post, he saw some male and female persons at the open area. He even recognized two (2) of them as the spouses Jess and Remedios ("Tisay") Punzalan.

He did not try to find out what the commotion earlier reported to him was all about and only learned of the killing of the victims in these cases when the NBI arrested him on January 29, 1994. He did not see it when he incident occurred but is definite that it happened outside the "Posadas property".[8]

On the other hand, a summary of the testimony of accused-appellant RAFAEL reads thus:

He is a security guard of the FEMJEG Security Agency who was assigned at Posadas, Sucat Subdivision in the month of January, 1994.

In the evening of January 17, 1994, at about 11 PM and being off-duty, when he was sleeping at the barracks near the clubhouse inside the "Posadas" compound, he was awakened by accused Alagon who asked him to accompany him in going to security guard Patacsil's post. The two (2) of them walked to the place and he noticed the women outside, more or less 15 meters from the side of the compound.

There was a commotion but he did not know what it was all about. Neither was he informed that there was a killing that happened during that night. As a security guard at the compound, he never roamed around the "Posadas property" because it was his commander who did that.

x x x x x x x x."[9]

In support of the first and second assigned errors, accused-appellant RAFAEL argues that based on the testimonies of prosecution witnesses Remedios Punzalan and Celedonio Arandela, Jr., he was not a participant in the actual shooting of the two (2) victims and that the trial court misappreciated his act of putting-out the "sulo" as a signal for ALAGON to commence firing at the two (2) victims in the cover of darkness. RAFAEL faults the trial court in presuming and inferring from said act that a conspiracy existed between ALAGON and RAFAEL.

In support of the third assigned error for accused-appellant ALAGON, it is pointed out that the trial court which rendered the decision was not the same one which heard the most damaging accounts of Remedios Punzalan and Celedonio Arandela, Jr. and consequently, the latter erred in according credence to the testimonies of Remedios Punzalan and Celedonio Arandela, Jr. notwithstanding the following factors which render the same improbable and incredible: 1. Remedios Punzalan claims she saw ALAGON shoot the victims from a distance of fifty (50) meters in the darkness of the night, with the area illuminated only by a "sulo" (or a lighted gin bottle filled with gas with a piece of cloth inside); 2. Remedios Punzalan's reaction immediately after the shooting was to run

towards Alagon, claiming that she felt that this was the only safe place to hide at the time; 3. Remedios Punzalan failed to positively identify the weapon allegedly used by ALAGON; 4. Celedonio Arandela, Jr. could not have identified ALAGON as the one who shouted "Dapa, walang kikilos" immediately preceding the shooting for lack of familiarity with the voice of ALAGON.

In fine, the crux of the appeal of RAFAEL is that the trial court erred in finding the existence of conspiracy in the commission of the crime charged and consequently finding him guilty of murder. On the other hand, the crux of the appeal of ALAGON is that the trial court erred in giving credence to the testimonies of prosecution witnesses Remedios Punzalan and Celedonio Arandela, Jr.

We shall deal with the issues raised by ALAGON first.

As a general rule, the factual findings of trial courts deserve respect and are not disturbed on appeal, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted, and would otherwise materially affect the disposition of the case. ALAGON points out, however, that this rule does not apply when the judge who penned the decision was not the same one who had heard the prosecution witnesses testify, as in the present case.

The records bear out that on four (4) trial dates (September 20, September 27, October 4 and October 18, 1994) consisting of the direct and cross-examination of Remedios Punzalan, and on two (2) other trial dates (December 19, 1994 and February 6, 1995), consisting of the direct and cross-examination of Celedonio Arandela, Jr., it was Judge Cristina M. Estrada who heard and conducted the trial. On July 7, 1995, acting favorably on the motion filed by the herein accused, Judge Cristina C. Estrada inhibited herself from further hearing these cases and ordered that the records be remanded to the Office of the Clerk of Court for re-raffling. These two (2) cases were re-raffled to Branch 156, presided by Judge Martin S. Villarama, on July 24, 1995.

It appears however that Judge Martin S. Villarama had ample opportunity to assess the credibility of these witnesses on the succeeding trial dates (September 5, 1995, and June 19, 1996) as to Remedios Punzalan and (September 13, 1995 and June 26, 1996) as to Celedonio Arandela, Jr., both of whom testified on substantive matters on said dates. Moreover, we have carefully perused and considered the records of this case, and we find no reason to alter the findings of the trial court in regard to the credibility of the prosecution witnesses and their testimonies.

The clear and convincing testimony of Remedios Punzalan positively points to ALAGON as the killer of Elarde Magno and Isidro Barcelona. While Remedios Punzalan was fifty (50) meters away from the assailant as well as the victims, the area was sufficiently illuminated as found by the trial court by 4 "sulos". Thus, while the crime was committed in the darkness of the night, there was sufficient illumination in the area coming from the four (4) "sulos" aligned along the 50-meter distance from where the victims were standing to the vigil site where Remedios Punzalan was standing. Numerous cases have held that illumination coming from a "gasera" is sufficient for purposes of identification of an assailant.[10] In the instant case, the locus delicti was sufficiently illuminated by four (4) "sulos".

The distance of fifty (50) meters away from the scene of the crime, taken by itself, may lead the Court to entertain doubt on the accuracy of what a witness has observed. In the present case, however, Remedios Punzalan, could not have been mistaken in the identification considering that the area was illuminated by four (4) "sulos"; her view was not obstructed; and Remedios Punzalan's recognition of ALAGON was facilitated by the fact that the security guards, ALAGON included, moved into the "Posadas property" more than a month prior to the incident and had become very familiar to the residents therein. Once a person has gained familiarity with another, identification becomes quite an easy task even from a considerable distance.[11] We quote excerpts from the

testimony of Remedios Punzalan on this point:

Q:

At that particular point when you heard the shot, you said you saw the accused. Did you actually see the accused pulled the trigger of the firearm?

A:

I saw it very clearly, sir.

Q:

Even from the distance where you were standing to the distance where the accused was?

A:

It was clear so I could see it very clearly.

Q:

Why do you say that it's clear enough to be seen by you?

A:

Because there were four other remaining light and the sulo was bright, sir.[12]

This Court rejects the contention of ALAGON that Remedios Punzalan's failure to positively identify the weapon used by ALAGON as an armalite detracts from her credibility. Remedios Punzalan described the firearm as long and this is already consistent with the physical make-up of an armalite.[13] Neither does Remedios Punzalan's reaction immediately after the shooting, that is, of running towards ALAGON as she felt it was the safest place she could hide render her testimony incredible. The contention of ALAGON that the expected reaction of the witness should have been to run away from ALAGON and in the opposite direction is non sequitur. It is a common rule that witnesses to a crime react in different ways.[14]

Remedios Punzalan's account was bolstered by Celedonio Arandela who testified that he recognized the voice of the one who shouted "Dapa, walang kikilos" as that of ALAGON. The latter contends that it was impossible for this witness to recognize his voice since Celedonio Arandela, Jr. himself testified that on the three occasions that the two met, ALAGON poked his gun at the witness without uttering a word. This contention is belied by Celedonio's testimony that in those three instances when ALAGON would poke his gun at him he spoke to him asking him if he were carrying a gun.[15] At this juncture, it is worthy of mention that over and above the testimony of Celedonio, the eyewitness account of Remedios Punzalan can stand on its own. The well-entrenched rule is that the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner. It has been held that witnesses are to be weighed, not numbered; hence, it is not at all uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness.[16] The trial court observed that "Remedios Punzalan elucidated her version of the events leading to the shooting of the two victims in a candid and straightforward manner." [17]

Against the positive identification of Remedios Punzalan, all that accused-appellant ALAGON could interpose as defense is denial, which, under settled jurisprudence, could not prevail over the positive testimony of witnesses. Denial is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[18] While it is true that the prosecution cannot profit from the weakness of the accused-appellant's

defense and that it must rely on the strength of its own evidence, nonetheless, the testimony of Remedios Punzalan points to ALAGON as the perpetrator.

We shall now resolve the arguments of RAFAEL.

While the evidence of the prosecution points to ALAGON as the one who fatally shot Elarde Magno and Isidro Barcelona, the participation of RAFAEL in the commission of the crime is premised on the alleged presence of conspiracy in the commission thereof. The crucial issue, therefore, insofar as accused-appellant RAFAEL is concerned, is whether or not the prosecution has adequately proved the presence of conspiracy.

We rule in the negative.

There is conspiracy where, at the time the malefactors were committing the crime, their actions impliedly showed a unity of purpose among them, a concerted effort to bring about the death of the victim.[19] In the instant case, trial court pinned down the culpability of RAFAEL as a co-conspirator in the crime as follows:

"Accused Rafael's role was to provide the adequate setting for accused Alagon to triumphantly execute a well-planned deed. The act of the former of himself having put out the light of the "sulo" immediately preceding the shooting definitely demonstrates that there was conspiracy on his and accused Alagon's acts. Given the direct testimonies of the prosecution witness in this regard, it is not farfetched for the Court to assume that accused Alagon and Rafael had deliberately committed their outrageous crime in the darkness of the night." [20]

The testimony of Remedios Punzalan relative to the participation of RAFAEL in the two murders is as follows:

Q:

What did he do, if any, during that incident?

A:

When we were having a vigil in that place Dominador Rafael approached us and told us to put out the light which was at the boundary, ma'am.

Q:

What did you do upon hearing what Rafael told you?

A:

I told him why should we put out the light when there are also people who are having a vigil. When I refused to put out the light he was the one who put out the light by blowing it.

Q:

Then what happened next when Rafael put out the light by blowing the light?

A:

When Rafael left suddenly we heard somebody threw stones made of 1/4 hollow blocks. At the same time we heard a voice saying "dapa", ma'am.

x x x x x x x x." [21]

She testified further:

Q:

Now, you mentioned that while you were there at the opening, Dominador Rafael came and blew out the lights?

A:

He did not blow the lights. He requested us if we can put off the lights, sir.

Q:

Where was he when he made that request? (Witness pointing to the light of the other side of the sketch going to the other side before he reach the other fence).

Q:

You did not avail of his request, is that correct?

A:

No, sir.

x x x x x x x x.

Q:

When Dominador Rafael requested you to put off the lights and you did not heed the request, he was the one who put off the lights?

A:

Yes, sir.

Q:

And after he blew the lights, you personally lighted the lights?

A:

Yes, sir.

Q:

Now, after that, you heard the word "dapa"?

A:

No, sir. I heard the shout "dapa" when somebody stoned at the lights.

Q:

After you put on the lights, somebody threw a stone?

A:

Yes, sir.

Q:

Where was the stone land?

A:

To the light itself, sir.

Q:

Did it also put off the light?

A:

Yes, sir.

Q:

So the light at that time was put off?

A:

Yes, sir.

Q:

After the stoning, you heard the word "dapa"?

A:

Simultaneous, sir.

Q:

Where did the stone roll after it hit the light? To what direction?

A:

I did not see where it rolled because I looked back, sir.

Q:

Why did you look back?

A:

To the person who shouted "dapa", sir.

x x x x x x x x."[22]

Celedonio Arandela, Jr. testified that "somebody put out the light in the vigil site." [23]

Evidently, the participation of accused-appellant RAFAEL was limited to requesting that the lights be put out and putting out one light himself. While RAFAEL, put out one (1) light, Remedios Punzalan lit it again, at which point RAFAEL left and did not persist in putting out the lights. There is no testimony to the effect that he was the one who stoned the "sulo" simultaneously with the shout "Dapa, walang kikilos". Further, there was absolutely no showing that RAFAEL knew that ALAGON intended to kill the victims. His action of putting out one (1) light, with four (4) other "sulos" illuminating the area is not conclusive of a conspiracy between ALAGON and RAFAEL. It cannot be said that there was already a concerted effort to bring about the death of the victims.

Conspiracy, like the crime itself, must be proven beyond reasonable doubt.[24] Existence of conspiracy must be clearly and convincingly proven. The accused must be shown to have had guilty participation in the criminal design entertained by the slayer, and this presupposes knowledge on his part of such criminal design. Conspiracy may not be deduced from the mere act of RAFAEL of putting out one (1) light. No inference could be made that

the act of RAFAEL points to a joint purpose and design, a concerted action, and community of interest[25] with ALAGON.

Since conspiracy was not proved, the act of one cannot become the act of all. Hence, RAFAEL must be acquitted of the charges against him.

As a penultimate matter, the information for murder against accused-appellants alleged treachery and evident premeditation as aggravating circumstances. However, there was no evidence from the prosecution to prove evident premeditation. To establish evident premeditation, it must be shown that there was a period sufficient to afford full opportunity for meditation and reflection and a time adequate to allow the conscience of the actor to overcome the resolution of his will.[26] Stated differently, the essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[27] The prosecution omitted or failed to present any evidence to establish the elements of evident premeditation.

On the other hand, treachery qualified the killing of Elarde Magno and Isidro Barcelona. Remedios Punzalan saw the actual shooting and she narrated how the assault commenced, as follows:

WITNESS:

A:

It is like this, ma'am. Eladio Magno was sitting on the other end of the triangle position and Isidro Barcelona on the other end. They are sitting on a triangle position. Carlie Alagon was standing on the middle of Isidro Barcelona and Eladio Magno. He first shot Isidro Barcelona and then he shot Elarde Magno, ma'am.

x x x x x x x x[28]

Evidently, the attack came without warning and that the victims had absolutely no opportunity to defend themselves or to escape. ALAGON used an armalite while the victims were unarmed[29] and there is no showing that the latter provoked in any way the former. The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim.[30] The suddenness of the attack against unarmed victims clearly indicate treachery.[31]

The last issue to be resolved is whether the heirs of the victims Elarde Magno and Isidro Barcelona are entitled to actual, moral, exemplary damages and loss of income which would have been earned had it not been for the untimely death of the victims.

We cannot sustain the award of P82,000.00 as actual damages in favor of the heirs of Elarde Magno. The records show that the prosecution failed to substantiate the bare assertion of the widow, Jovina Magno, with other corroborative evidence. The Court can only grant such amount for expenses if they are supported by receipts.[32] In the absence thereof, no award for actual damages can be granted. For the same reason, the award of actual damages to the heirs of Isidro Barcelona should be reduced from P140,000.00 to P5,500.00 as the amount duly supported by documentary evidence. We affirm the award of P50,000.00 each to the heirs of Elarde Magno and Isidro Barcelona as indemnity for the deaths of Elarde and Isidro as this is in accord with prevailing jurisprudence.[33] We note, however, that the trial court erred in awarding to the heirs of the two victims lump sums of P100,000.00 each for moral and exemplary damages. These are separate in nature and require separate determination. Considering that the heirs of the victims asked for it and testified that they experienced moral suffering, moral damages in the amount of P50,000.00[34] is awarded to the heirs of the victims to compensate them for the injuries to their feelings.[35] The award for exemplary damages must be deleted, considering the crime was committed without any other aggravating circumstances. Finally, we must also add the award for loss of

earning capacity. Lilibeth Barcelona, sister of the deceased Isidro Barcelona testified that the latter was earning P145.00 a day[36] or P4,350.00 per month and the records reveal that he was twenty-seven (27) years old at the time of his death.[37] On the other hand, it was established that Elarde Magno was thirty-one (31) years old at the time of his death[38] and earning P4,5000.00 per month.[39] Loss of earning capacity is computed based on the following formula:[40]

As to Isidro Barcelona:

Net Earning Capacity (x)

=

life expectancy $[2/3(80\text{-age at death})]$

x

Gross Annual Income (GAI)

-

Living expenses (50% of GAI)

X

=

2 (80-27)

x

52,200.00

-

26,100.00

3

X

=

35

x

26,100.00

Net Earning Capacity =
P913,500.00

As to Elarde Magno, his loss of earning capacity is computed as follows:

Net Earning Capacity (x)
=
life expectancy [2/3(80-age at death)]
x
Gross Annual Income (GAI)
-
Living expenses (50% of GAI)

X
=
2 (80-31)
x
54,000.00
-
27,000.00

3

X
=
33
x
27,000.00

Net Earning Capacity =

P891,000.00

WHEREFORE, the appealed decision is hereby MODIFIED as follows:

Accused-appellant Carlie Alagon is found GUILTY of MURDER for the deaths of Elarde Magno and Isidro Barcelona. For the death of Elarde Magno, he is hereby sentenced to reclusion perpetua and is ordered to pay the heirs of Elarde Magno P50,000.00 death indemnity, P50,000.00 moral damages and P891,000 for loss of earning capacity. For the death of Isidro Barcelona, he is hereby sentenced to reclusion perpetua and is ordered to pay the heirs of Isidro Barcelona P50,000.00 death indemnity, P50,000.00 moral damages, P5,500.00 actual damages and P913,500.00 for loss of earning capacity.

On the other hand, accused-appellant Dominador Rafael is ACQUITTED of the crimes charged and his immediate release from confinement is ORDERED unless he is detained for some other lawful cause.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Per Judge Martin S. Villarama, Jr.

[2] Rollo, p. 45.

[3] Original Records, p. 1.

[4] Ibid., p. 3.

[5] Rollo, pp. 58-59.

[6] Rollo, pp. 33-34.

[7] Rollo, p. 35.

[8] Rollo, pp. 37-38.

[9] Rollo, pp. 39-40.

[10] People vs. Belo, 299 SCRA 654 (1998).

[11] People vs. Castillo, 261 SCRA 493 (1996).

[12] TSN dated September 5, 1995, p. 12.

[13] TSN dated September 20, 1994, p. 5.

[14] People vs. Rabosa, 273 SCRA 142 (1997).

[15] TSN dated February 6, 1995, pp. 8-13.

[16] People vs. Mallari, G.R. No. 103547, July 20, 1999.

[17] Rollo, p. 44.

[18] People vs. Burce, 269 SCRA 293 (1997).

- [19] Sison vs. People, 250 SCRA 58 (1995).
- [20] Rollo, p. 43
- [21] TSN dated September 20, 1994, pp. 14-15.
- [22] TSN dated October 4, 1994, pp. 8-11.
- [23] TSN dated December 19, 1994, p. 7.
- [24] People vs. Dulatre, Jr., 248 SCRA 107 (1995).
- [25] People vs. Laurente, 255 SCRA 545 (1996), People vs. Landicho, 258 SCRA 1 (1996) cited in People vs. Bermudez, G.R. No. 129033, June 25, 1999.
- [26] People vs. Albao, 287 SCRA 129 (1998).
- [27] People vs. Bautista, 278 SCRA 613 (1997).
- [28] TSN dated September 20, 1994, p. 8.
- [29] TSN dated February 6, 1995, p. 14.
- [30] People vs. Ombrog, 268 SCRA 93 (1997).
- [31] People vs. Tuson, 261 SCRA 711 (1996).
- [32] People vs. Gutierrez, Jr., G.R. No. 116281, February 8, 1999 at p. 24.
- [33] People vs. Verde, G.R. No. 119077, February 10, 1999 at p. 17.
- [34] Ibid.
- [35] Ibid.
- [36] TSN dated January 31, 1996, p.4.
- [37] O.R., p. 305.
- [38] O.R., p. 49.
- [39] TSN dated January 31, 1996, p. 9.
- [40] People vs. Verde, Supra; People vs. Gutierrez Jr., Supra at p. 26.

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