

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER ANIVADO AND GEORGE CARDENAS, ACCUSED-APPELLANTS.

G.R. Nos. 131022, 146048 & 146049. December 14, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

These cases are here on automatic review from the decision,[1] dated October 16, 1997, of the Regional Trial Court, Branch 54, Alaminos, Pangasinan, finding accused-appellants Roger Anivado and George Cardenas guilty of murder and aggravated illegal possession of firearm and sentencing each of them to death.

In Criminal Case No. 3124-A (for Murder), the information against accused-appellants alleged —:

That on or about May 7, 1996 at around 1:45 o'clock in the afternoon at Brgy. Arwas, municipality of Bani, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, with intent to kill, with treachery and evident premeditation, armed with firearms, did then and there wilfully, unlawfully and feloniously shot RESTITUTO C. ACENAS inflicting upon him mortal gunshot wound which caused his death as a consequence, to the damage and prejudice of his heirs.

Contrary to Article 248 of the Revised Penal Code.

In Criminal Case No. 3125-A (for Aggravated Illegal Possession of Firearm and Ammunition), the information against Roger Anivado charged --

That on or about May 7, 1996 in the afternoon at Brgy. Poblacion, municipality of Bani, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession, control and custody one (1) Colt Combat Commander Pistol Caliber 45 with Serial No. 112043 with one (1) magazine and seven (7) live ammunitions for Caliber 45 without first securing the necessary license and/or permit to possess the same and the said firearm was used in shooting to death RESTITUTO C. ACENAS.

Contrary to P.D. 1866.

And in Criminal Case No. 3126-A (also for Illegal Possession of Firearm and Ammunitions), the information against George Cardenas recited —:

That on or about May 7, 1996 in the afternoon at Brgy. Poblacion, municipality of Bani, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession, control and custody one (1) Smith and Wesson Revolver Caliber 357 without Serial Number with six (6) live ammunitions without first securing the necessary license and/or permit to possess the same from the lawful authorities.

Contrary to P.D. 1866.

The three cases were tried jointly. The prosecution presented as eyewitness Eddie Catabay ("Eddie"), 34 years

old, married, a farmer, and resident of Tiep, Bani, Pangasinan. Eddie personally knew the victim Restituto Acenas alias "Totoy Bato" ("Restituto") who was formerly a vice mayor and also a councilor of Bani, Pangasinan. Eddie was also familiar with accused-appellant George Cardenas who frequently went to the cockpit in Arwas. Eddie testified that, at noontime on May 7, 1996, he went to the victim's residence because he had been invited by the latter to go to the Arwas cockpit. It was past 1 o'clock in the afternoon when they entered the arena. Inside were around 40 spectators. Eddie was about three meters from Restituto who occupied a seat in the combat box. Restituto lost in the first match. Eddie saw him paying his bet when suddenly gunshots rang out. Restituto was felled by a single shot coming from the second floor of the cockpit. There was panic all over the place as people scampered for safety. When Eddie looked up, he saw the gunman with his pistol pointed downward, about two meters from Restituto. The gunman had long hair and was wearing short pants. Then Eddie saw accused-appellant George Cardenas, whom he also knew, signal to the gunman to run towards the exit. Eddie followed and saw the two men running toward a motorcycle. The gunman looked back and then he and George Cardenas sped off towards the Poblacion. Eddie went back to his wounded companion and, together with the others, took him to a hospital in Alaminos. They later transferred him to the Villaflor Hospital in Dagupan where he died on May 10, 1996. For fear of his own life, Eddie kept to himself what he had witnessed. But on May 9, 1996, 40 hours after the incident, he decided to give a statement to the police.[2]

The prosecution presented other witnesses.

SPO2 Henry Camba testified that he was having lunch at the Arwas cockpit at the time of the shooting. Upon hearing the gunshots, he immediately went to the arena to investigate. There he found Restituto seriously wounded. After asking other people for help, he went to the cockpit's only entrance/exit where he was told that two persons had just fled on board a motorcycle and were heading towards the Poblacion. One was described to him as being long-haired and wearing polo denim (maong) and blue short pants. Accordingly, he and Barangay Kagawad Mariano Catabay boarded a PNP vehicle and went after the suspects.[3]

They were able to corner the suspects at the Embarcadero Bridge. The suspects, herein accused-appellants, had apparently met an accident. SPO2 Camba grabbed accused-appellant Roger Anivado and recovered from him a Colt Commander cal. 45 pistol with serial number 112043.[4] Seated around three meters from Anivado was accused-appellant George Cardenas who had been injured in the mishap. A few minutes later, SPO2 Camba was joined by SPO1 Julio Calixtro, Jr. George Cardenas was also arrested. Recovered from him was a home-made Smith and Wesson type Cal. 357 revolver with six live ammunitions.[5]

SPO2 Camba and SPO1 Calixtro Jr. were later joined by SPO2 Decorozo Ortaleza, Chief Investigator of the Bani police, and PO3 Corland de Vera.[6] They brought accused-appellants to the police station where Camba and Calixtro turned over to Ortaleza and de Vera the firearms and ammunitions they had recovered.[7] For marking purposes, SPO2 Ortaleza engraved his initial "DDO" on the cal. 357 revolver and each of its bullets.[8] PO3 de Vera, on the other hand, marked the cal. 45 pistol and its bullets with his initials "CAV." [9]

SPO2 Ortaleza and PO3 de Vera then proceeded to the Arwas cockpit where they found one cal. 45 slug,[10] one spent shell,[11] and blood spots[12] on the floor where Restituto had fallen. They took pictures of the seized articles and the scene of the crime.[13] The seized firearms were sent to the PNP Crime Laboratory for examination. On the other hand, Roger Anivado, from whom the cal. 45 pistol used in the killing had been seized, was given a paraffin test.[14]

Police Inspector Pascual Mangal-ip, a ballistics expert of the PNP Crime Laboratory, received the cal. 45 pistol with serial number 112043 seized from accused-appellant Roger Anivado, the spent shell marked "CAV," and the slug marked "CAV." He marked the specimens with his initials "PCM" and conducted the ballistics examination

on them. His findings, contained in Ballistics Report No. B-021-96,[15] showed that the specimen bullet fired from the cal. 45 pistol had revealed the same individual characteristics as the test cartridge cases and bullets. Inspector Mangal-ip explained that "individual characteristics" referred to the minute striations or details found in the evidence. He added that the barrels of different firearms, even those of the same manufacturer, have "individualities." [16]

The other prosecution witnesses were Dr. Ferdinand Florendo and Rosalinda Acenas, Restituto's widow. Dr. Florendo testified that Restituto died due to the injuries caused by the bullet which hit him on the nape, injuring his spinal cord and paralyzing him. The bullet also damaged Restituto's lungs and esophagus before finally exiting at his left side. Dr. Florendo testified that the gunman was positioned behind Restituto and had fired from an elevated position.[17]

Rosalinda Acenas testified on the extent of damages being claimed against accused-appellants, after which the prosecution rested its case.

The defense, on the other hand, presented accused-appellants who denied the charges against them. Accused-appellant George Cardenas, 27, single, and a farmer, testified that in the morning of May 7, 1996, he was in the house of his sister, Nida Obtinalia, in Barangay Banog, Bani, Pangasinan. With him were his sister's family and his cousin, accused-appellant Roger Anivado. He said that at past 1 o'clock in the afternoon, he and Roger Anivado left to test drive a second-hand TMS Honda motorcycle which he had bought on May 4, 1996 from Prudencio Jimenez.[18] He explained that the motorcycle had undergone repairs and he wanted to test drive it again with Roger Anivado. For this reason, he and Anivado went out to the highway and proceeded to the town proper. They tried to overtake a tricycle at a blind curve but as a truck from the opposite lane was coming, he swerved the motor to the left side and, in so doing, lost control of the vehicle. They hit the railings and was knocked unconscious by the impact. When he regained consciousness at about 3 o'clock in the afternoon, he found himself in the municipal jail. He was informed by the police that he was a suspect in the killing of Restituto Acenas. However, he was not told that he was also being charged with illegal possession of firearm. A doctor treated him for his injuries inside the cell.[19]

Accused-appellant Roger Anivado, 23 years old and jobless, corroborated George Cardenas' testimony. He added that he also lost consciousness as a result of the accident and that, like Cardenas, he found himself inside the municipal jail when he woke up. He claimed that he had asked for a doctor but the police refused to give him one. They then took him to a camp in Lingayen where he underwent paraffin testing. Anivado stated that he was actually a resident of Zambales and was just spending his vacation in Bani, Pangasinan. He knew the deceased Totoy Bato only by name and had never been to the Arwas cockpit arena. As to the caliber .45 pistol allegedly seized from him, Anivado claimed that the Bani policemen were just trying to manufacture evidence against him and his co-accused George Cadenas. Anivado said the police simply arrested them on the information that the killers of Totoy Bato were riding a motorcycle. He admitted though that, at the time of the accident, he was wearing a denim (maong) jacket with short sleeves and that he had long hair.[20]

On the theory that he was not really at the Arwas cockpit arena at the time of the shooting on May 7, 1996, the defense also called Eddie Catabay as a hostile witness. Eddie Catabay testified that he was employed at the Municipality of Bani as a janitor and member of the Bantay-Dagat. The defense presented Eddie's daily time record for the month of May, 1996, signed by him, in which it appeared that on May 7, 1996, he reported for work as janitor in the municipal building and that he was there from 8 o'clock in the morning until 12 noon, and then from 1 o'clock until 5 o'clock in the afternoon. It was, therefore, contended that he could not have been at the cockpit arena at 1 o'clock in the afternoon as he had earlier claimed. Catabay clarified, however, that he did his work at night in Olanen, Pangasinan because he was also a member of the Bantay-Dagat. His shift usually started

from 6:30 in the evening to 7 o'clock in the morning of the following day. The daily time record was submitted only for the purpose of enabling him to collect his salaries.[21]

The other defense witnesses were: (1) Eduardo San Juan, Municipal Administrator of Bani, Pangasinan, whose testimony was offered to support the claim that eyewitness Eddie Catabay was not at the cockpit arena at the time of the shooting incident since he was then working as a janitor at the Bani municipal hall; (2) SPO4 Roberto Manuel of the Firearms and Explosives Office of the Pangasinan PNP, whose testimony was offered to prove that, despite the defense's admission that accused-appellants' names were not found in the master list of licensed firearms-holders in Pangasinan, such list covered only the province of Pangasinan and was not updated; (3) Rosalinda Jimenez, who stated that on May 4, 1996, accused-appellant George Cardenas bought her husband's motorcycle. Although the deed was signed by her husband, Prudencio Jimenez, it was she who negotiated the sale. She also stated that when it was sold, the motorcycle had just undergone repairs although it was still defective;[22] (4) Fredolino Mendoza, owner of the Arwas cockpit arena, whose testimony was offered to prove that, at the time of the shooting incident, there were many spectators inside the cockpit who also witnessed the shooting; (5) Dr. Ricky Figueroa, who testified on the extent of George Cardenas' injuries after the accident at Embarcadero Bridge.[23] He confirmed that the impact of the fall as shown by George Cardenas' head injuries could knock him unconscious. When he attended to Cardenas inside the municipal jail on May 7, 1996, the latter was alone inside the cell. He never saw or treated accused-appellant Roger Anivado;[24] (6) Nida Obtinalia, sister of accused-appellant George Cardenas, who corroborated her brother's testimony that on May 6, 1997, he and Roger Anivado were in her house and that the two left at around 1 o'clock in the afternoon to test drive the motorcycle.

On October 16, 1997, the trial court found accused-appellants guilty of murder aggravated by illegal possession of firearm. It found the testimony of eyewitness Eddie Catabay to be straightforward, convincing, and credible. It noted Eddie Catabay's demeanor on the witness stand and said that, both as a prosecution witness and as a hostile witness, Catabay's testimony was spontaneous and direct to the point. The trial court also stated that it could not find any ill motive for Eddie Catabay to testify against accused-appellants. His positive identification of accused-appellants must therefore prevail over the latter's denial. With regard to the negative result of the paraffin test on accused-appellant Roger Anivado, the trial court cited several cases[25] in which such result was held to be inconclusive in establishing that the accused had not fired a gun. The trial court found conspiracy between accused-appellants as shown by their cooperative acts. Finally, it held that the qualifying circumstances of evident premeditation and treachery attended the killing.[26]

On the basis of its findings, the trial court ordered:

WHEREFORE, in consideration of the foregoing premises, judgment is hereby rendered, declaring both accused GUILTY beyond reasonable doubt of the crime of Murder, aggravated by the illegal possession of firearms, subject of Criminal Case Nos. 3125-A and 3126-A and by reason of which, both accused should suffer the extreme penalty of DEATH in accordance with the provision of Republic Act No. 7659, Section 6, and to pay the surviving heirs of the deceased the amount of P500,000.00 as moral damages and another sum of P150,000.00 as actual and compensatory damages.

Treachery and evident premeditation have qualified this killing to the crime of murder under Republic Act No. 7659, Section 6.

Criminal Case Nos. 3125-A and 3126-A are merely considered as aggravating circumstances for purposes of the imposition of the penalty thereof.

The Provincial Warden is ordered to immediately conduct the living bodies of the accused to the National Penitentiary in Muntinlupa, considering the gravity of the penalty and to report to this Court within 72 hours

the compliance of this order.

No cost.[27]

In view of the imposition of the death penalty, these cases were elevated to this Court for automatic review. Accused-appellants make the following assignment of errors:

- THE COURT A-QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDIBLE AND IMPROBABLE TESTIMONY OF THE ALLEGED EYEWITNESS FOR THE PROSECUTION.
- THE COURT A-QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.
- THE COURT A-QUO GRAVELY ERRED IN FINDING THAT TREACHERY AND EVIDENT PREMEDITATION ATTENDED THE COMMISSION OF THE CRIME CHARGED.

We find the foregoing contentions to be without merit.

First. Accused-appellants assail the trial court's reliance on the testimony of Eddie Catabay on the ground that it is incredible and replete with inconsistencies. They assert that the trial court overlooked certain facts of substance which, if considered, could affect the outcome of these cases. Specifically, accused-appellants claim that Eddie lied because, while his daily time record[28] stated that on May 7, 1996 he worked as a janitor in the Bani municipal hall from 8 o'clock in the morning to 12 noon and then from 1 o'clock to 5 o'clock in the afternoon, he also insisted that he was at the Arwas cockpit arena and witnessed the killing of Restituto early in the afternoon of the same day.[29]

We have carefully considered the evidence which accused-appellants now claim to have been overlooked by the trial court. We find that the same has no material bearing on the credibility of Eddie Catabay as an eyewitness. The alleged anomaly about his whereabouts at the time of the shooting incident was sufficiently explained by him as follows:

ATTY. AQUINO:

Q

I noticed that Exhibit "3" was filled up in one setting, is that correct?

A

Yes, sir.

Q

Meaning, you just filled Exhibit "3" in one day, is that it?

A

Yes, sir.

Q

And you filled up Exhibit "3" in order to enable you to collect your salary, is it not?

A

Yes, sir.

Q

And you only report to the municipal hall on the day you will receive your salary, is it not?

ATTY. CAALAMAN:

Objection, your Honor. No basis. Misleading, your Honor.

ATTY. AQUINO:

Why do we have to lay the basis on cross-examination?

COURT:

Answer!

WITNESS:

A

Yes, sir.

ATTY. AQUINO:

Q

And you receive your salary every fifteenth and the last day of every month, is it not?

A

Yes, sir.

Q

You said on direct-examination that you were in Olanen performing your duty as assigned member of the Bantaydagat. Do you remember that?

A

I was on duty on May 6, sir, and on May 7, I will be on duty again.

Q

You mean to say that you are supposed to be on duty on May 7 in Olanen?

A

Yes, sir.

Q

But actually, you were not there in Olanen on May 7, is it not, performing your duty as member of the Bantaydagat?

A

I performed my duties at nighttime, sir.

Q

In other words, from May 1 to May 15, you were there performing your duties as member of the Bantaydagat in the evening?

A

Yes, sir.

Q

What time do you usually go there in the evening?

A

6:30, sir.

Q

Until what time do you stay there?

A

7:00 o'clock in the morning, sir.

ATTY. AQUINO:

No further questions, your Honor.

COURT

Alright, the Court . . .

Q

You have affirmed before the Court that you submitted that Exhibit "3" which is the daily time record for May 1 to May 15, 1996, is that correct?

A

Yes, sir.

Q

And do you want this Court to believe that these entries here in Exhibit "3", more particularly on the day May 7, 1996, that this is wrong? 8 to 12, 8 in the morning, 12 departure; 1 o'clock in the afternoon, arrival, 5 in the afternoon, departure, since you claim that you were on duty as Bantaydagat in Olanen, Dacap Sur, Bani, Pangasinan?

A

That is correct, sir, but I performed my duty as Bantaydagat in Olanen at nighttime.

Q

Where were you, therefore, at 8 o'clock in the morning to 12 and 1 to 5 on May 7, 1996?

A

At 8 o'clock in the morning, sir, I went home and at 11 o'clock, I went to sleep and at 12 o'clock, I went to the cockpit at Arwas.

Q

You want to tell the Court that this Exhibit "3" which is a daily time record is for purposes of drawing your salary because the government will not approve a salary if it is for nighttime because this could not be passed in audit?

A

Yes, sir.

Q

But not necessarily that this is true as to the transaction that you were in on May 7, 1996?

A

I performed my duty at 8 in the evening, sir.

Q

So, all these entries from May 1 to May 15, stating here that you arrived at the municipal hall at 8 o'clock and you departed from the municipal building at 12 o'clock and you arrived at 1 and you departed at 5 o'clock, these were all not true?

A

That is true, sir, because I performed my duty at night.

Q

At Olanen as Bantaydagat and not as janitor, is that what you mean?

A

Yes, sir.

Q

So, you want to tell the Court that you lied fifteen times in these May 1 to 15 in your daily time record?

A

This is correct, sir, but I performed my duty at night.[30]

The Court further notes the following statements from defense witness and Bani Municipal Administrator Eduardo San Juan: (1) Eddie Catabay was employed by the municipality as a casual utility worker and as a member of the bantay-dagat; (2) he actually performed a variety of jobs, depending on the particular task assigned; and (3) the daily time records of municipal employees were prepared every 15 days, regardless of the time actually worked.[31] This testimony of the municipal administrator gives credence to Eddie's claim that while he was officially employed as a janitor, his work on May 7, 1996 was really as bantay-dagat from 6 o'clock in the evening to 7 o'clock in the morning of the following day.

We also agree with the trial court that Eddie Catabay's testimony on the circumstances surrounding the killing of Restituto C. Acenas was spontaneous and direct. There is nothing incredible about the fact that he was able to observe the gunman well and remembered what the latter was wearing and that the gun used had no cylinder. The late Restituto Acenas was his friend, and, therefore, this witness was interested to see what had been done to him. There could be other witnesses, but they could also be afraid to testify. SPO2 Decorozo Ortaleza, in fact, told of a

certain Camilo Orchotorena whom he interviewed at the scene of the crime whose description of the gunman tallied with that given by Eddie. Despite his attempts to convince him, however, Orchotorena refused to even make a formal statement.[32] Such fear is understandable. Considering that Restituto was at one time vice mayor and had even ran for mayor, the possibility was that the crime was politically motivated and that someone powerful was behind it.[33] That is why even Eddie Catabay did not decide to give a statement to the police until after 40 hours. It has not been shown that Eddie had any motive to falsely testify against accused-appellants.

Second. The trial court correctly found conspiracy between accused-appellants as shown by their concerted acts, unity of thought, and community of purpose.[34] Their denial finds no support from the evidence.

Accused-appellant Roger Anivado invokes the negative results of the paraffin test conducted on his hands. As correctly held by the trial court, however, even with such negative results, it still cannot be definitively concluded that he did not fire a gun, especially because he used a cal. 45 pistol. As held in *People v. Rebullar*:[35]

Neither will the accused's assertion of the absence of paraffin traces prove his innocence. As pointed out by Aida Magsipoc, Research Biologist of the NBI who conducted the paraffin test on Rebullar, negative findings on the paraffin test does not mean that he did not fire a gun. On the contrary, there is a great possibility that there will be no paraffin traces on the hand if the bullet was fired from a .45 caliber pistol.

As stated by the trial court:

On questioning by the Court, witness cited several factors wherein a person who has fired his firearm but was negative for nitrates; the type of the caliber of the ammunition of the firearm itself; a new firearm or revolver type would be so close that nitrates could not escape from the bridge of the gun, whereas an old firearm where the mechanism is already a little bit loose, more nitrates appear in the subject who fired the gun; the direction of the wind if the subject is firing the firearm against the target, the nitrates will be blown away from the scene and so he would also be negative of nitrates; depending on the velocity of the wind, humidity of the area where the shooting happened; in a closed room or place and there is no wind on or against the firearm, he could be positive for nitrates; whereas outside the room he would be negative and the less humid the area the less fall of nitrates on the subject, and another possibility is if the subject is using something to cover his hand firing the gun it would be negative for nitrates and in using a 45 caliber gun, which has a close and tight compartment where the bullet is set and with the revolver type firearm which has an open chamber, the former has a greater possibility that he would be negative for nitrates.

Accused-appellants also claim that they were injured because when they tried to overtake a tricycle, they saw a truck coming from the opposite direction, prompting George Cardenas to swerve the motorcycle and, in the process, they fell. However, none of the drivers or passengers of the two other vehicles who could have corroborated this claim was presented. It is more probable that, as the prosecution says, the accident happened as accused-appellant tried to evade arrest.

Accused-appellants also interposed the defense that they had been mistaken by the police to be Restituto's killers. Such claim must fail. From the first descriptions given to the police by bystanders and spectators like Camilo Orchotorena, there is just too much semblance between accused-appellant Roger Anivado and the gunman. As Roger Anivado himself testified, he was really not from Bani but was from Zambales. This explains why he was not identified by the other spectators at the cockpit.

Third. Accused-appellants also assail the trial court's finding that the qualifying circumstances of treachery and evident premeditation attended the killing. We agree that evident premeditation cannot be appreciated in these cases. When conspiracy is merely inferred from the acts of the accused in the perpetration of the crime, evident premeditation may not be appreciated in the absence of proof as to how and when the plan to kill the victim was hatched, or what period of time elapsed before it was carried out.[36] The essential elements of evident

premeditation, to wit: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the culprit had clung to his determination; and (c) a sufficient lapse of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will, cannot be inferred from the mere fact that accused-appellants acted in concert.[37]

The Court finds, however, that treachery was correctly appreciated by the trial court to qualify the killing to murder. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[38] Here, treachery clearly attended the killing of Restituto. Roger Anivado was behind the victim, at an elevated position, when he hit Restituto on the nape. The suddenness of the attack insured that Restituto would have absolutely no opportunity to defend himself. Moreover, being in a cockpit with about 40 other spectators present, Restituto did not suspect any danger to himself. He was paying his bet and had not the slightest inkling that he would be shot from behind by Roger Anivado. To insure the execution of their plan without risk to accused-appellants, one of them, George Cardenas, was inside the arena, armed and ready to extend assistance to his cousin Roger Anivado. Accused-appellants obviously took advantage of the panic that followed the shooting by fleeing.

Fourth. Having established that accused-appellants are guilty beyond reasonable doubt of murder in view of the treachery which attending the killing, we now determine the proper penalty and civil liability of accused-appellants.

Applying Republic Act No. 8294,[39] the trial court considered the fact that there was illegal possession of firearms in these cases as an aggravating circumstance and consequently imposed on accused-appellants the death penalty. Accused-appellants now contend that the prosecution failed in establishing the charges of illegal possession of firearms. We find no need to consider this contention, because, on the basis of our recent ruling in *People v. Valdez*,[40] illegal possession of firearms cannot be appreciated as an aggravating circumstance in the present case.

In *Valdez*, the accused was convicted by the trial court of the separate crimes of multiple murder with double frustrated murder and illegal possession of firearms. As in these cases, the crimes were committed before P.D. 1866[41] was amended by R.A. 8294 and they were jointly tried. There, we convicted the accused for four counts of murder and two counts of frustrated murder. However, with respect to the charge of illegal possession of firearm, we held:

Now, to the matter of accused-appellant's conviction for illegal possession of unlicensed firearm under Presidential Decree No. 1866. It was recently held in the case entitled *People v. Molina* (G.R. Nos. 115835-36, July 22, 1998), and reiterated in *People v. Feloteo* (G.R. No. 124212, September 17, 1998), that there can be no separate conviction of the crime of illegal possession of firearms under Presidential Decree No. 1866 in view of the amendments introduced by Republic Act No. 8294.

Instead, illegal possession of firearms is merely to be taken as an aggravating circumstance per Section 1 of Republic Act No. 8294, which in part, provides:

If homicide or murder is committed with the use of unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

Republic Act No. 8294 took effect on July 6, 1997, fifteen days after its publication on June 21, 1997. The crimes involved in the case at bar were committed on September 17, 1995. As in the case of any penal law, the provisions of Republic Act No. 8294 will generally have prospective application. In cases, however, where the

new law will be advantageous to the accused, the law may be given retroactive application (Article 22, Revised Penal Code). Insofar as it will spare accused-appellant in the case at bar from a separate conviction for the crime of illegal possession of firearms, Republic Act No. 8294 may be given retroactive application in Criminal Case No. U-8749 (for Illegal Possession of Firearm) subject of this present review.

As a word of caution, however, the dismissal of the present case for illegal possession of firearm should not be misinterpreted as meaning that there can no longer be any prosecution for the crime of illegal possession of firearm. In general, all pending cases involving illegal possession of firearm should continue to be prosecuted and tried if no other crimes expressly indicated in Republic Act No. 8294 are involved (murder or homicide under Section 1, and rebellion, insurrection, sedition or attempted coup d'etat under Section 3).

However, the use of an unlicensed firearm in the case at bar cannot be considered as a special aggravating circumstance in Criminal Case No. U-8747 (for Complex Crime of Multiple Murder), also under review herein, because it will unduly raise the penalty for the four counts of murder from four reclusion perpetua to that of four-fold death. Insofar as this particular provision of Republic Act No. 8294 is not beneficial to accused-appellant because it unduly aggravates the crime, this new law will not be given retroactive application, lest it might acquire the character of an ex-post facto law.[42]

On the basis of the foregoing ruling, which was reiterated in *People v. Macoy, Jr.*,[43] we hold that illegal possession of firearm, even if duly proved, cannot be appreciated as an aggravating circumstance against accused-appellants.

The award of the civil liability must likewise be modified. The trial court ordered accused-appellants to pay the heirs of Restituto Acenas the amounts of P500,000.00 as moral damages in view of his social stature as a former vice mayor and councilor, and P150,000.00 as actual and compensatory damages. The amount of P500,000.00 as moral damages is excessive. Moral damages are not awarded to punish the defendant but to compensate the heirs for the injuries to their feelings.[44] The award should thus be reduced to P50,000.00. In accordance with our rulings,[45] the additional amount of P50,000.00 should, however, be ordered paid by accused-appellants as indemnity for the death of Restituto Acenas.

The award of P150,000.00 as actual and compensatory damages was made by the trial court to cover hospital bills and funeral expenses. However, the rule is that actual and compensatory damages must be duly proved with a reasonable degree of certainty for the courts cannot rely on speculation or guesswork as to the fact and amount of damages.[46] Furthermore, Art. 2199 of the Civil Code provides that one claiming actual damages is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. In the present case, other than the self-serving testimony of Rosalinda Acenas, widow of Restituto Acenas, the prosecution failed to present any receipt to prove the amount claimed as actual damages. For lack of evidentiary basis, the Court is thus constrained to delete the award of P150,000.00 for actual and compensatory damages. It being clear, however, that the heirs of Restituto Acenas really incurred hospital and funeral expenses, they are hereby awarded the amount of P15,000.00 by way of nominal damages.[47]

Finally, the prosecution claimed compensation for unearned income because Rosalinda Acenas testified that, at the time of his death, Restituto Acenas was earning a monthly income of at least P14,100.00 for managing their welding shop and their rice mill.[48] However, the trial court correctly denied the claim. Unearned income partakes of the nature of damages, and, therefore, must be proved not only by credible and satisfactory evidence but by unbiased proof.[49] In *People v. Cotas*,[50] we ruled that if the only evidence to prove unearned income is the testimony of the deceased's common-law wife, the same is insufficient for being self-serving. So it is in the present case where the only evidence is Rosalinda Acenas' testimony.

WHEREFORE, the decision of the trial court in Criminal Case No. 3124-A (for Murder) is **AFFIRMED** with the

MODIFICATION that accused-appellants' sentence is reduced to reclusion perpetua. Accused-appellants are also ORDERED to PAY the heirs of Restituto Acenas the sums of P50,000.00 as moral damages, P50,000.00 as civil indemnity, and P15,000.00 as nominal damages.

Criminal Case Nos. 3125-A and 3126-A involving Presidential Decree No. 1866 are DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

- [1] Per Judge Jules A. Mejia.
- [2] TSN, pp. 3-19, Sept. 30, 1996.
- [3] TSN, pp. 3-7, Nov. 5, 1996.
- [4] Exh. B.
- [5] Exhs. C-1 to C-6; TSN, pp. 7-10, Nov. 5, 1996.
- [6] Also referred to in the TSN as "Corlan de Vera."
- [7] TSN, pp. 9-11, Nov. 5, 1996.
- [8] TSN, p. 25, Nov. 14, 1996.
- [9] TSN, p. 22, Dec. 16, 1996.
- [10] Exh. B-3.
- [11] Exh. B-2.
- [12] Exh. E-3; Records, p. 325.
- [13] Exhs. E to E-5.
- [14] TSN (Corland de Vera), pp. 31-32, Dec. 17, 1996.
- [15] Exh. G-1.
- [16] TSN, pp. 51-60, Dec. 17, 1996.
- [17] TSN, pp. 7-10, Nov. 7, 1996.
- [18] Exh. 4.
- [19] TSN, pp. 2-12, June 11, 1997.
- [20] Id., pp. 12- 21.
- [21] TSN, April 2, 1997, pp. 1-11.
- [22] TSN, May 13, 1997, pp. 1-9.
- [23] As shown by George Cardenas' record card, Exh. 7.
- [24] TSN, pp. 3-8, June 10, 199,.

[25] *People v. Manalo*, 219 SCRA 656 (1993); *People v. Talingdan*, 191 SCRA 333 (1990); *People v. Rebuliar*, 188 SCRA 838 (1990).

[26] RTC Decision, pp. 19-26; Rollo, pp. 45-52.

[27] Records, pp. 26-27.

[28] Exh. 3, from May 1 to 15, 1996.

[29] Appellants' Brief, pp. 9-15; Records, pp. 89-95.

[30] TSN, pp. 7-11, April 2, 1997 (emphasis added).

[31] TSN, pp. 4-6, May 7, 1997.

[32] The transcript of his testimony are as follows:

ATTY. AQUINO:

Few re-direct, your Honor.

Q

You declared on cross-examination that you have interviewed some persons at the cockpit arena, will you please mention some of the people or persons interviewed?

A

Camilo Ochotorena

Q

What information did Camilo Ochotorena gave you?

ATTY. MONTERO:

That would be hearsay, your Honor.

ATTY. AQUINO:

He talked personally.

ATTY. MONTERO:

But that would consist of hearsay evidence.

ATTY. AQUINO:

That is part of the *res gestae*.

COURT:

Reform your question.

ATTY. AQUINO:

Q

What were you able to gather from Camilo Ochotorena?

ATTY. MONTERO:

That would be the same.

COURT:

Objection denied.

WITNESS:

A

He told me the description of the assailant, sir.

Q

What description did Camilo Ochotorena gave you?

A

A long hair, sir.

Q

What else?

A

Wearing a maong short jacket and wearing short pants, colored dark blue.

(Cont'n.)

Q

Did you try to get the written statement of Camilo Ochotorena?

ATTY. MONTERO:

That would be leading.

COURT:

May answer.

WITNESS:

A

He does not like to give his statement sir because according to him, he was afraid.

Q

Did you not try to convince him to give his statement?

A

I convinced him sir, but he refused to give his statement, sir, because he was afraid (TSN, pp. 13-15, Dec. 16, 1996.)

[33] From the records, it appears that accused-appellant Roger Anivado's full name is Roger Anivado y Cacho. PO3 Corlan de Vera testified that the middle name "Cacho" was the family name of the incumbent Vice-Mayor. When he asked him if he was related to the Vice-Mayor, Anivado refused to answer. (TSN, pp. 49-50, Dec. 17, 1996).

[34] See *People v. Bernal*, 274 SCRA 197 (1997); *People v. Arroyo*, 201 SCRA 616 (1991).

[35] 188 SCRA 838, 844 (1990) (emphasis added).

[36] *People v. Repe*, 175 SCRA 422 (1989).

[37] *People v. Arcamo*, 105 SCRA 707, 718-719 (1981).

[38] The Revised Penal Code, Art. 14(16).

[39] An Act Amending the Provisions of Presidential Decree No. 1866, As Amended.

[40] 304 SCRA 611 (1999).

[41] 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, Ammunitions or Explosives, and imposing Stiffer Penalties for Certain violations Thereof, and for Relevant Purposes.

[42] 304 SCRA 611, 630-631 (1999) (emphasis added).

[43] G.R. No. 126253, Aug. 16, 2000.

[44] *People v. Silvestre*, G.R. No. 127573, May 12, 1999; *People v. Aringue*, 283 SCRA 291 (1997).

[45] *People v. Francisco*, G.R. No. 118573-74, May 31, 2000; *People v. Borrromeo*, G.R. No. 130843, January 27, 2000.

[46] *Del Rosario v. Court of Appeals*, 267 SCRA 158 (1997).

[47] See *People v. Gopio*, G.R. No. 133925, Nov. 29, 2000.

[48] TSN, Feb. 13, 1997, p. 10.

[49] *People v. Villanueva*, 302 SCRA 380 (1999); *People v. Sanchez*, G.R. No. 131116, Aug. 27, 1999; *People v. Ereño*, G.R. No. 124706, Feb. 24, 2000.

[50] G.R. No. 132043, May 31, 2000 citing 302 SCRA 380 (1999), where the only evidence to support the claim for unearned income was the testimony of the victim's widow; followed in the cases of *People v. Sanchez*, G.R.

No. 131116, Aug. 27 1999 and *People v. Ereño*, G.R. No. 124706, Feb. 24, 2000.

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