

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEY MANLANSING Y AMBROSIO, AND MARIO MANLANSING Y AMBROSIO, ACCUSED-APPELLANTS.

G.R. Nos. 131736-37. March 11, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For automatic review is the joint decision[1] dated May 2, 1997, of the Regional Trial Court of Cabanatuan City, Branch 27, in Criminal Cases No. 6150-AF and No. 6151-AF, convicting appellants of two counts of murder and sentencing them to suffer the penalty of death for each count. Appellants were also ordered to pay the heirs of the victims P250,000 for actual damages and P500,000 as moral damages for each count of murder.

Appellants are brothers. For four years they were tenants of the spouses Magin[2] and Jorja Soriano.

In an amended information dated December 30, 1994, appellants were charged with the murder of Jorja Soriano allegedly committed as follows:

That on or about the 27[th] day of December, 1994, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually aiding one another, with intent to kill and with evident premeditation, treachery and taking advantage of night time and with the use of bolo, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of JORJA SORIANO y Rigor by hacking the latter, thereby inflicting upon the latter serious injuries which directly caused her death.

CONTRARY TO LAW.[3]

In an amended information also dated December 30, 1994, and similarly worded except for the victim's name, appellants Joey and Mario Manlansing were likewise charged with the murder of Magin Soriano.[4]

Inasmuch as the two cases were interrelated, having arisen from the same incident, the two cases were consolidated.

On arraignment, Joey Manlansing pleaded not guilty to both charges, while Mario Manlansing pleaded guilty to two counts of murder. After they waived pre-trial, both cases were heard on the merits.

For the prosecution, SPO2 CASTILLONES of the Philippine National Police (PNP), testified that at around 8:00 A.M. on December 28, 1994, a concerned citizen informed the Cabanatuan City Police Station of an alleged killing in a house at Bitas, Cabanatuan City. Immediately, a team composed of P/Insp. Bienvenido Padua, SPO2 Castillones, and SPO1 Edgardo Pangilinan went to the place.[5] When they arrived at the Soriano residence, they spotted bloodstains on the ceiling. Before they entered the house, they waited for Nestor Villa of the National Bureau of Investigation (NBI) who was tasked to take fingerprints at the crime scene.[6] In the stockroom on the first floor, they found the lifeless body of 70-year-old Magin in a pool of blood.[7] There were several wounds on his hands and arms, as well as cuts on his head. They took pictures of the corpse.[8] Upstairs, they found the

corpse of his 68-year-old spouse, Jorja, on the floor, her throat slit and her neck hacked.[9] Her throat was stuffed with a small towel and bloodstains covered her stomach.[10] The investigators also took photos of the deceased. When they turned her body over, they found a six-inch bloodstained knife, with the initials “JF” carved in the handle.[11] The police made rough sketches[12] and took more photographs,[13] while Villa lifted fingerprints from the scene and the knife.[14] These were sent to the NBI office in Manila. The cadavers were brought to the City Health Office for autopsy.

DR. JUN CONCEPCION, medical officer of Cabanatuan City, who autopsied the bodies, testified that Magin’s death was due to “hypovolemic shock secondary to multiple hacking wounds on the head and nape.”[15] Jorja’s death was the result of “hypovolemic shock secondary to hacking wound on the neck, right side.”[16] They died between 10:00 P.M. on December 27, 1994 to 3:00 A.M. of December 28, 1994. Dr. Concepcion testified that from the nature of the injuries sustained, the wounds could have been inflicted by more than one person, since two different weapons were used.[17] He declared that the weapon used to inflict the hacking wounds was not pointed, while the stab wounds were caused by a sharp and pointed instrument.[18]

Two carpenters constructing a chapel for the Sorianos said that appellants frequented the house of the victims even at night. They reported seeing appellants enter the Sorianos’ house on the night of December 27, 1994. Thus, the police ordered a manhunt for the Manlansing brothers.

On December 28, 1994, appellant Joey Manlansing was arrested in Sta. Clara, Cuyapo, Nueva Ecija and brought back to Cabanatuan City for questioning. During custodial investigation, Atty. Edgardo Villarin, the city legal officer, advised him not to talk.[19] Nevertheless, he named his brother, Mario, as the killer. He denied participation in the killing, but he admitted boxing Jorja in the face to prevent her from shouting, while Mario was assaulting her husband.[20]

SPO3 CAMPOS declared that on December 29, 1994, the police were tipped that appellant Mario Manlansing was hiding in Paniqui, Tarlac. Accompanied by Enrique Manlansing, appellants’ father, they went to Paniqui and apprehended Mario.[21] During the custodial investigation, assisted by counsel, he confessed.[22] He said he hid the bolo at his sister-in-law’s house in Sta. Clara, Cuyapo, Nueva Ecija.[23] It was recovered and sent to the NBI in Manila for examination.

NBI forensic chemist ALICIA LIBERATO testified that she examined a bolo and a knife and found human bloodstains on them.[24]

On December 30, 1994, a re-enactment of the crime was done at the crime scene. Mario said that after he killed the spouses, he and Joey ransacked bags in the house but found neither money nor jewelry. He told Joey to change his clothes so they could go. Mario then got some rags and tried to clean up the place. He went to the bathroom downstairs to wash the bolo and the rags.

NBI fingerprint expert NESTOR VILLA took the fingerprints from the crime scene and sent them to the office in Manila for examination.

BAYANI[25] PALAD, a dactyloscopy expert, testified that a comparison of the prints from the crime scene showed that two prints matched the left middle and ring fingerprints of appellant Joey Manlansing.[26]

For the defense, MARIO MANLANSING claimed he alone was responsible for the deaths. In open court, Mario affirmed his confession and insisted that his brother had nothing to do with the deaths.[27] He claimed that Joey woke up only after he killed Magin[28] and that Joey tried to unsuccessfully stop him from attacking Jorja. He said he killed the couple out of anger after Jorja told him that he was going to be ejected as a tenant. Mario said Joey knew nothing of his motive.[29]

On the stand, appellant JOEY MANLANSING affirmed his sworn statement naming Mario as the person solely responsible for killing the spouses. He denied any participation in it,[30] but admitted hitting Jorja because she was shouting and he did not want his brother to hear her, lest he attack her too.[31]

The defense also presented ENRIQUE MANLANSING, the father of the appellants. He testified that he fetched Mario from Paniqui, Tarlac, in order to surrender him to the authorities.[32]

Finally, the prosecution presented a balut vendor, MARIO BARTOLOME, as its rebuttal witness. He testified that on the night of the killings, he was plying his trade at “Cynthia’s Eatery,” right across the Sorianos’ residence. At around 11:00 P.M. he offered his wares to two persons who came out of the Sorianos’ house. He noticed that both had bloodied shirts. When he inquired about the bloodstains, they answered they had just killed a pig and threatened he could be next. Scared, he shut up. The following day, he heard about the killings on the radio but did not inform the police about his encounter with the appellants. It was only after his conscience bothered him that he reported it to the police.[33]

After trial, appellants were convicted, thus:

WHEREFORE, this Court holds that the guilt of both accused had been proven beyond reasonable doubt and therefore sentences them (to):

- 1) Death in Criminal Case No. 6150;
- 2) Death in Criminal Case No. 6151;
- 3) In both cases to pay the heirs of the deceased:
 - a) P250,000.00 by way of funeral and other expenses and actual damages.
 - b) P500,000.00 as moral damages.

SO ORDERED.[34]

Hence, this automatic review. Appellants allege in their brief that the trial court committed the following errors:

I

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT JOEY MANLANSING IN CRIMINAL CASE NO. 6150-AF AND 6151-AF DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION.

III

THE TRIAL COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH AND TAKING ADVANTAGE OF NIGHTTIME.

IV

THE TRIAL COURT LIKewise ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TREACHERY.

V

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY UPON ACCUSED-APPELLANTS MARIO MANLANSING AND JOEY MANLANSING.

Two principal issues are for resolution: (1) Did the trial court err in convicting both appellants Mario Manlansing and Joey Manlansing for alleged conspiracy to kill the Sorianos? (2) Did the trial court err in imposing the death penalty upon appellants?

On the first issue, appellants contend that since there were no other witnesses, nothing can be clearer than the confession of appellant Mario Manlansing that he alone killed the couple and that his brother Joey had nothing to do with the incident. They submit that a confession if freely and voluntarily given is deserving of the highest credit. Inasmuch as Mario's confession was freely and voluntarily given and was reiterated by him during trial, the lower court erred in not giving credit to said confession.

Appellants also aver that the trial court likewise erred in finding Joey guilty of conspiring with Mario notwithstanding Mario's categorical confession that Joey had no participation in the killings. Appellants contend that the mere fact that they are siblings does not mean that Mario's testimony was not credible. According to appellants, an accused in a criminal case may competently testify for or against any of his co-accused.

For the appellee, the Office of the Solicitor General (OSG) avers that the guilt of appellant Joey Manlansing as a conspirator has been proven beyond reasonable doubt. First, he admitted boxing Jorja in the face. However, he explained that he only did this out of fear that Mario might hear her shout and attack her. But, as stressed by the OSG, the medico-legal evidence contradicts Joey's statement that he boxed Jorja only once. The autopsy report showed that Jorja sustained hematoma on her face and chest, an indication that she was struck several times. Second, the city medical officer, Dr. Concepcion, testified that from the nature and types of wounds found on the bodies of the victims, one person alone could not have inflicted the fatal injuries. The police recovered two different types of weapons, namely, a bolo and a knife. Third, a comparison of the fingerprints taken from the crime scene and Joey's standard fingerprints showed that two of his fingerprints were recovered from the crime scene. Fourth, Mario admitted during the re-enactment of the incident that he and Joey ransacked the place looking for cash and jewelry. Fifth, rebuttal witness Mario Bartolome testified that he saw appellants step out of the Sorianos' house on the night of the killings wearing bloodstained shirts. Finally, Joey's flight from Cabanatuan City belies his innocence regarding the killing of the Sorianos. Flight is an indication of guilt, for a truly innocent person would normally stand his ground, and grasp the first opportunity to defend himself and clear his name.

While giving credence to the confession of Mario Manlansing that he killed the couple, the trial court disbelieved appellant's claim that he alone did both killings and that Joey had no participation therein. Instead, it relied on a chain of circumstances to show that appellants conspired to kill the Sorianos, and committed the crimes pursuant to that conspiracy.

The conviction of Joey Manlansing is thus anchored on the premise that there was conspiracy between the brothers. Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.[35] Conspiracy does not require a previous plan or agreement to commit an assault. It is sufficient that at the time of the aggression all the accused manifested by their acts a common intent or desire to attack.[36] Jurisprudence tells us consistently that the conduct of the accused before, during, and after the commission of the crime may be considered to show an extant conspiracy.[37] The testimonial and physical evidence on record reveals that Joey's conduct during and after the attack of his brother on the spouses was conspiratorial. Most significant of these pieces of evidence is the finding of Dr. Concepcion, that from the depth and nature of the victims' wounds, the weapon used for hacking could not be the same as the one used for stabbing. The discovery of the two weapons, a bolo recovered in Tarlac where Mario hid and which he admitted was his, and a knife recovered underneath Magin's corpse, confirms the finding that the wounds were inflicted by two different weapons. If indeed, as Mario confessed, he did the killings single-handedly, he would then be using

a bolo and a knife either simultaneously, alternatively, or successively in killing Magin. As Dr. Concepcion opined, simultaneously hacking and stabbing by using a long weapon and another short bladed weapon was impossible. That Mario would use both the bolo and the knife alternatively or successively is unlikely to be true and contrary to the nature of reality. The logical conclusion would then be that, considering the two weapons, there were at least two attackers, each using one deadly instrument.

There are other reasons for us to discount the story of the brothers that only Mario single-handedly killed the spouses. For one, we find inconsistencies in their testimonies. In Joey's sworn statement, which he executed in front of witnesses and in the presence of counsel, he said he punched Jorja, ". . . para walang makarinig"[38] In his testimony in court he said, "Because she might be heard by my brother and he might attack her." [39] Again, Mario said that Joey tried to stop him from hurting Jorja and while trying to grapple the bolo from him, Joey got wounded.[40] Yet, Joey in his sworn statement does not mention getting wounded and said that he was merely elbowed by his brother when he tried to stop the latter from harming Jorja.[41] And, in his testimony in open court, he merely said Mario hurled insulting words at him as they struggled over the bolo.[42] He does not say anything about being wounded. A major variation in Joey's statements that gives his reason for assaulting a victim and an omission of an important detail, i.e. his being wounded, together cast doubt on Mario's disavowal that Joey did not participate in the killings. His story was obviously an afterthought to absolve his younger sibling. Testimonies to be believed must not only come from the mouth of credible witnesses but should by themselves be credible, reasonable and in accord with human experience.[43]

In addition, the brothers' footprints and fingerprints were lifted from the crime scene. Before they fled they both tried to wipe out traces of their foot and handprints. Both admitted that they ransacked the place for valuables after the spouses were slain. Lastly, on their way out of the compound, a witness whom they threatened to be butchered like a hog, saw them with their shirts bloodstained.

All the foregoing details presented as evidence by the prosecution more than suffices to show that the brothers were united and had cooperated in a conspiracy to attack the spouses. In a conspiracy, the act of one conspirator is the act of the other co-conspirator. Thus, Joey is equally responsible as his brother, Mario for the death of the Sorianos.

Mario and Joey were convicted on the basis of Mario's sworn statements confessing to the killing of the spouses, the testimonies of the witnesses for the prosecution, as well as on circumstantial evidence addressed before the trial court. To sustain a conviction on circumstantial evidence, the following requisites must concur: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[44] The circumstances themselves, taken together, should point to overt acts of the accused that would logically point to the conclusion, and no other, that the accused is guilty of the crime charged and at the same time inconsistent with the hypothesis that he is innocent.[45]

We agree with the trial court and the OSG that the chain of circumstances, all of which have already been discussed, can only lead to the conclusion that Joey and Mario cooperated to commit the killings. To summarize, they are: (1) the medico-legal officer's testimony that two different bladed weapons were used, (2) his finding that one person alone could not have inflicted the wounds simultaneously, (3) the recovery of two distinct bladed weapons, (4) Joey's admission that he boxed Jorja (4) both appellants' admission that they searched the victims' belongings for cash and valuables, (5) the presence of Joey's fingerprints at the scene of the crime, and (6) the testimony of the balut vendor that he saw the brothers with bloodstained shirts leaving the locus criminis together. Thus, we find no error committed by the trial court in holding that both appellants had conspired and are guilty beyond reasonable doubt of killing Magin and Jorja Soriano.

However, we are unable to agree now with the trial court that the offenses committed by appellants could be qualified as murder. They are guilty only of double homicide. Hence, it is improper now to impose the death penalty on each of them.

A review of the informations filed against appellants, in relation to prevailing law and jurisprudence as well as the newly adopted revisions of the Rules of Court favorable to the accused will show that the crimes of the brothers could not be qualified as murder. Only recently in *People vs. Gario Alba* alias “Mario Alba, G.R. No. 130523, promulgated January 29, 2002, we ruled that pursuant to Sections 8 and 9 of Rule 110 of the Revised Rules on Criminal Procedure^[46] which took effect on December 1, 2000, the information should state not only the designation of the offense and the acts and omissions constituting it but shall also specify its qualifying and aggravating circumstances.^[47] We noted in *Gario Alba*, that although the circumstance of treachery was stated in the information, it was not alleged with specificity as qualifying the killing to murder. Since the information in *Gario Alba*, failed to specify treachery as a circumstance qualifying the killing to murder, treachery was considered only a generic aggravating circumstance, hence, we said that the crime committed in *Gario Alba* was homicide and not murder.

So is it with the present case. None of the aggravating circumstances were alleged in the informations nor in the amended informations with specificity as a qualifying circumstance elevating either killing to murder. Thus, conformably with *Gario Alba*, the offenses committed by appellants only constitute two counts of homicide and not murder. Since the penalty for homicide under 249 of the Revised Penal Code is reclusion temporal, it is incorrect to sentence both appellants to death.

In evaluating the circumstances that qualified the crimes to murder, the trial court considered, aside from evident premeditation, treachery, nighttime, and use of a deadly weapon, the aggravating circumstances of abuse of superior strength and dwelling.

We note that abuse of superior strength and dwelling were not alleged in the informations. In accordance then with Section 8 of Rule 110 of the Revised Rules of Criminal Procedure, abuse of superior strength and dwelling may not be appreciated to convict the brothers. Further, should there be a finding of treachery, then abuse of superior strength is absorbed by the former. We are thus left to review only the allegation that the aggravating circumstances of evident premeditation, treachery, and nocturnity were present in the commission of the crimes.

At the outset, we shall discount nocturnity as an aggravating circumstance, since in this case, the darkness of the night was not purposely sought by the offenders to facilitate the commission of the crime nor to ensure its execution with impunity.

The element of evident premeditation is manifested by the planning and preparation undertaken by the offender prior to the commission of the crime.^[48] It is not presumed from the mere lapse of time^[49] nor can it be deduced from sheer speculation.^[50] An intangible matter, evident premeditation is exhibited from these circumstances --- (1) the time when the offender has appeared determined to commit the crime; (2) the act evidently indicating that the offender has clung to his determination; (3) sufficient lapse of time between the determination to commit the crime and the execution thereof during which the offender could have reflected upon the consequences of his act.^[51] In the present case, all three circumstances are present and clear from the testimony alone of Mario. The TSN reads:

Q:

That conversation about the seedling, how long did it take?

A:

Only about fifteen minutes also, and then they went upstairs.

Q:

How long did you stay there after they left you watching the TV?

A:

When they went up, my brother Joey also retired for the night and I continued watching the TV and I turned off the TV at round 10:00 o'clock.

Q:

After turning off the TV, what else did you do?

A:

And then, I planned the method by which I could kill.

Q:

Sino? (Literally: "Who?")

Atty. Jackie A. Garcia:

Pinlano mo bang patayin sila? (Literally: "Did you plan to kill them?")

A:

I did not plan. It was only after hearing the words of Mrs. Soriano that she will have us killed.

Fiscal Amis:

When you switch off the TV at 10:00 o'clock, how long did you stay here in the sala before you went up?

A:

After switching off the TV, I stayed for ten minutes here and planning how to have them out of their room and I thought of the telephone.

Q:

After deciding about the method by which you can have them out of the room, what did you do?

A:

I got the bolo from my bag which was then placed on a chair. (witness pointing to a chair beside the door) I went upstairs and I placed it beside the laundry basket.

Q:

What time was that?

Atty. Jackie A. Garcia:

May I request of clarification. Maybe the time element be clarified as to how long from the time to turn the TV off?

Fiscal Amis:

7:15 when they brought the matter up, saka lang sila na-scold and then again, they watched the TV until 10:00 o'clock.

Q:

Do you have a watch?

A:

None, Ma'am.

Q:

What time approximately do you think was it when you went upstairs?

A:

It took me ten minutes, after 10:00 o'clock when I stayed in sala and it took me around five minutes to position the bolo and the telephone before I knock at their door.

Q:

How did you know that it was already 10:00 o'clock when you switched off the TV?

A:

I was watching and there was no clock there. (witness pointing to the TV)

Q:

You said that you intended to kill the victim with the use of bolo. Was that reason why you brought the bolo

with you?

A:

I have no intention to use the bolo to kill them initially, it was only that I thought of the bolo when we were scolded.

Q:

Was Majen Soriano able to shout for help?

A:

Only at the time when I first hacked him.

Q:

Was he still able to shout for help again?

A:

No more.

Q:

When he fell down the stairs, was he able to shout for help?

A:

He moaned when he fell down.[52]

Earlier, during the re-enactment, Mario testified,

Q:

What did you do when you went upstairs?

A:

The phone was ringing and I told them that there was somebody calling, so I knocked. When I knocked, the door was opened by the old man who came out of the room.

Q:

Who was that old man?

A:

Majen.

Q:

You are referring to Majen Soriano?

A:

Yes, Ma'am.

Q:

When he went out of the room, what happened?

A:

He went by the telephone which is near the staircase and he told me that there's nobody in the telephone.

Fiscal Ignacio E. Domingo:

“Talaga bang nagriring ang telepono? (Literally: “Was the telephone ringing really?”)

A:

The telephone was not really ringing. It was just my alibi.

Fiscal Amis:

At this juncture, PO3 Enrico Campose is posing as the old man Majen Soriano. PO2 Soriano is positioning himself upon instruction of the respondent Mario Manlansing beside a small table where the telephone was supposedly stationed.

Q:

Then what happened?

A:

I gave a telephone to Majen Soriano and then I took two steps backward and I got the bolo which was placed beside the laundry basket. When he saw that I was holding a bolo, he sprang from his chair and I immediately hacked him hitting his head and I saw blood from his head, then he made several steps and again, I hacked his head and he fell down the stairs.

Q:

Where did you get the bolo?

A:

I placed it there.

Q:

When did you place it there?

A:

When I planned to kill him and before I knock at their door, I placed the bolo beside the laundry basket. When he fell down the stairs, I followed him there. (witness pointing to the place where the body was then lying down) Majen rolled down the stairs and his head was near the refrigerator (which is located at the bottom of the stairs). (witness positioning himself with his left foot on the first step and the right foot on the second step and demonstrating that he again hacked the victim Majen Soriano)

Q:

Saan-saan tinamaan ang victim? (Literally: “Where was the victim hit?”)

A:

I hacked the old man on his head and then I went down and dragged him.

Q:

Saan mo hinawakan? (Literally: Where did you hold him?)

A:

I placed my handkerchief in his mouth and dragged him by his mouth toward the room while my other hand was holding his clothes. I dragged him inside the room and with the handkerchief stuffed in his mouth was boiling with blood (“kumukulo ng dugo”).

Q:

Was he still alive when you dragged inside the room?

A:

“Buhay siya at nanginginig pa siya at doon na siya nalagutan ng hininga.”[53] (Literally: “He was alive and still shaking and only then did his breathing stop.”) (Underscoring ours.)

Based on these testimonies on record, we have no hesitation in concluding that there was evident premeditation in the commission of the crimes. Likewise, treachery therein attendant was duly proved.

The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without any risk to the aggressor, without the slightest provocation on the victim’s part.[54] While mere suddenness of attack does not automatically mean treachery,[55] in these cases the narration of events before and during the commission of the attacks clearly indicate the presence of treachery. Appellants were allowed inside the house of the couple. They were even given supper after which the elderly couple went upstairs to their bedroom. Appellants remained downstairs and continued watching television. As the OSG correctly points out, the victims in extending their hospitality to their tenants, had neither hint nor suspicion of the fate that Mario had in store for them. When Mario lured Magin to the phone, the latter was unaware he would be attacked.

In Jorja's case, Joey claims he had boxed Jorja before Mario hacked her to death. But according to Mario, she was asleep when he entered the bedroom. He said she shouted, but "not loud", before he stuffed her mouth with a towel and slashed her neck. The attack on Jorja then was also without warning and was treacherous.

We must reiterate at this juncture, however, that the evident premeditation and the treachery in the present cases may only be considered as generic aggravating circumstances.

Coming now to the consideration of mitigating circumstances in the commission of the offense, Mario contends that the trial court failed to take into account the mitigating circumstances of his voluntary surrender and plea of guilty.

For voluntary surrender to be a mitigating circumstance, the following must concur: (1) the offender has not actually been arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary.[56] Recall that after the killings, Mario went into hiding in Paniqui, Tarlac and only surrendered after the Cabanatuan City police were tipped on his whereabouts and sent a team to arrest him. He did not spare the authorities the trouble and expense necessary to search and capture him. Clearly, Mario's surrender was neither spontaneous nor voluntary. Thus, the OSG was correct when it said that Mario did not voluntarily surrender.

However, the trial court did err when it failed to appreciate Mario's plea of guilty to the two charges against him. Under Article 13 (7)[57] of the Code, a plea of guilty on arraignment is a mitigating circumstance.

Insofar as Joey is concerned, there was no voluntary surrender and no voluntary plea of guilt, thus no circumstance is available to him to mitigate his crime.

The rule is that when both mitigating and aggravating circumstances attend the commission of the crime, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty.[58]

In the case of Mario, the aggravating circumstance of evident premeditation is offset by his spontaneous and voluntary admission of guilt. Thus, there is only treachery, treated as a generic aggravating circumstance, left to consider against him. Applying Article 64, par. 3,[59] of the Revised Penal Code, the penalty imposable is reclusion temporal in its maximum period. Further applying the Indeterminate Sentence Law, the minimum penalty is imprisonment within the range of prision mayor as minimum and the maximum of reclusion temporal as maximum.

In Joey's case, no mitigating circumstance could be appreciated in his favor for unlike his brother he did not plead guilty. Two generic aggravating circumstances, evident premeditation and treachery, are thus to be considered against him. Applying Article 64, par. 6, of the Revised Penal Code,[60] and the Indeterminate Sentence Law Joey shall serve the same indeterminate sentence as Mario.

A final word on damages. The trial court awarded the surviving heirs of the victims P250,000 by way of funeral and other expenses and as actual damages. In these cases, the prosecution failed to present any receipts to substantiate their claims for expenses allegedly incurred. To be entitled to such damages, it is necessary to prove the actual amount of loss with reasonable degree of certainty, premised upon competent proof and on the best evidence available to the injured party.[61] However, as the heirs of the victims did actually incur funeral expenses, we are justified in awarding P10,000 not for purposes of indemnification, but by way of temperate damages, in each case.[62]

We also find the award of P500,000 in moral damages excessive. Moral damages are not meant to enrich an injured party. In line with prevailing jurisprudence,[63] the award in each case should be reduced to P50,000. In

addition, P50,000 as civil indemnity in each of these cases is mandatory and is granted to the heirs of the victims without need of further proof other than the commission of the crime.[64]

WHEREFORE, the decision of the Regional Trial Court, Branch 27 in Cabanatuan City in the consolidated cases, Criminal Case No. 6150-AF and Criminal Case No. 6151-AF, finding both Joey Manlansing and Mario Manlansing, guilty of murder beyond reasonable doubt for the death of both Magin Soriano and Jorja Soriano, is hereby MODIFIED. Appellants Mario Manlansing and Joey Manlansing are each declared GUILTY beyond reasonable doubt of two counts of HOMICIDE defined in Article 249 of the Revised Penal Code. Each appellant is sentenced to suffer imprisonment for an indefinite period of 17 years, and 4 months as minimum to twenty (20) years as maximum for each count of homicide, with accessory penalties provided by law. Further, each appellant is ORDERED to pay the heirs of each victim P50,000 as civil indemnity, P50,000 as moral damages, and P10,000 as temperate damages. Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Records, Criminal Case No. 6150-AF, pp. 181-193.

[2] Also spelled “Magen” or “Majen” in the records.

[3] Records, Criminal Case No. 6150-AF, p. 8.

[4] Records, Criminal Case No. 6151-AF, p. 12.

[5] TSN, October 18, 1995, pp. 4-6.

[6] Id. at 7.

[7] Id. at 11.

[8] See Exhibits “WW-2,” “WW-2-1,” “WW-2-4,” and “WW-2-8,” Exhibits Folder 1, pp. 38-41; TSN, October 18, 1995, p. 11.

[9] TSN, October 18, 1995, pp. 13-14.

[10] Id. at 14, 21.

[11] Exhibit “FF-2,” Exhibits Folder 1, p. 20.

[12] Exhibits “LL” and sub-markings, “MM” and sub-markings, Exhibits Folder 1, pp. 26-27.

[13] See Exhibits “WW-2-2,” “WW-2-3,” “WW-2-5,” “WW-2-6,” “WW-2-7,” “WW-2-10,” and “WW-2-11,” Exhibits Folder 1, pp. 39-42.

[14] See Exhibits “C” to “Q,” Id. at 3-7.

[15] Exhibit “HH,” Exhibits Folder 1, p. 37.

[16] Exhibit “EE,” Id. at 35.

[17] TSN, March 1, 1995, p. 44.

[18] Id. at 44-45.

- [19] TSN, February 29, 1996, pp. 4-7.
- [20] Exhibit “QQ and sub-markings,” Records, Criminal Case No. 6151-AF, pp. 6-7.
- [21] TSN, July 2, 1996, pp. 5-8.
- [22] Exhibit “NN” and sub-markings, Exhibits Folder 1, pp. 28-29; TSN, October 18, 1995, pp. 25-34.
- [23] Supra, note 21 at 8-9.
- [24] TSN, August 20, 1995, pp. 12-14.
- [25] “Benjamin” in the Decision.
- [26] TSN, March 1, 1995, p. 21.
- [27] TSN, January 22, 1997, pp. 3-5.
- [28] Id. at 4.
- [29] TSN, February 4, 1997, pp. 3-4.
- [30] TSN, October 30, 1996, p. 18.
- [31] Id. at 17.
- [32] Id. at 4-6.
- [33] TSN, February 18, 1997, pp. 3-7.
- [34] Records, Criminal Case No. 6150-AF, pp. 192-193.
- [35] People v. Albao, G.R. No. 117481, 287 SCRA 129, 155 (1998).
- [36] People v. Robedillo, G.R. No. 95355, 286 SCRA 379, 385 (1998).
- [37] People v. Gungon, G.R. No. 119574, 287 SCRA 618, 633 (1998).
- [38] Records, Criminal Case, No. 6151-AF, p.7.
- [39] TSN, Vol. I October 30, 1996, p. 17.
- [40] Supra, note 3 at 11; TSN, January 22, 1997, p. 4.
- [41] Supra, note 3 at 6-7.
- [42] Id. at 7.
- [43] People v. Lavapie, et al, G.R. No. 130209, March 14, 2001, p. 24, citing People v. Atad, G.R. No. 114105, 266 SCRA 262, 275-276 (1997).
- [44] People v. Mercado, G.R. No. 116239, 346 SCRA 256, 283-84 (2000).
- [45] People v. Abillar, G.R. No. 134606, 346 SCRA 433, 435 (2000).
- [46] Sec. 8. Designation of the offense.- The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. Cause of the accusation.- The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[47] People vs. Alba, supra, at 10.

[48] People vs. Morin, G.R. No. 101794, 241 SCRA 709, 716 (1995).

[49] People vs. Silvestre, G.R. No. 109142, 244 SCRA 479, 495 (1995).

[50] People vs. Ganzagan, Jr., G.R. No. 113793, 247 SCRA 220, 235 (1995).

[51] People vs. De la Cruz, G.R. No. 111568, 242 SCRA 129, 142 (1995).

[52] TSN, Re-enactment, December 30, 1994, pp. 13-17.

[53] TSN, Re-enactment, December 30, 1994, pp. 3-5.

[54] People v. Cirilo, G.R. No. 134245, 346 SCRA 648, 660-61 (2000), citing People v. Macuha, 310 SCRA 14, 23-24 (1999).

[55] People v. Alo, G.R. No. 125533, 348 SCRA 702, 711 (2000), citing People v. Magallanes, 275 SCRA 222, 234 (1997).

[56] People v. Alo, supra, note 54 at 712, citing People v. Sumalpong, 284 SCRA 464, 468 (1998).

[57] Art. 13. Mitigating circumstances. The following are mitigating circumstances:

7. That the offender had voluntarily surrendered himself to a person in authority or his agents. Or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

[58] REV. PEN. CODE, art. 63 (4).

[59] Art. 64. Rules for the application of penalties with three periods._ In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Article 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or there are no mitigating or aggravating circumstances:

x x x

3. When only an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.

x x x

6. Whatever may be the number and nature of the aggravating circumstances, the court shall not impose a greater penalty than that prescribed by law, in its maximum period.

[60]Ibid.

[61] People v. Samolde, G.R. No. 128551, 336 SCRA 632, 654 (2000), citing People v. Suelto, G.R. No. 126097, 325 SCRA 41, 59 (2000).

[62] *People v. Anivado*, G.R. Nos. 131022, 146048-49, 348 SCRA 74, 94 (2000), citing *People v. Gopio*, G.R. No. 133925, 346 SCRA 408, 431 (2000); *People v. Carillo*, G.R. No. 129528, 333 SCRA 338, 353 (2000), citing *Sumalpong v. Court of Appeals*, G.R. No. 123404, 268 SCRA 764, 775 (1997).

[63] *People v. Casturia*, G.R. No. 128819, 345 SCRA 206, 212 (2000).

[64] *People v. Torres, Jr.*, G.R. No. 138046, 347 SCRA 526, 540 (2000), citing *People v. Adoc*, G.R. No. 132079, 330 SCRA 626 (2000).

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