

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FELIPE DEMATE Y LOGANA ALIAS “DODONG MORALES” AND DANTE MORALES (AT LARGE), APPELLANTS.

G.R. Nos. 132310 & 143968-69. January 20, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In Criminal Case No. 8511, the Regional Trial Court (RTC) of Batangas City, Branch 84, found appellant Felipe Demate y Logana a.k.a. “Dodong Morales” guilty of murder and sentenced him to death.[1] Hence, this instant automatic review[2] of said decision, together with the trial court’s supplemental decision,[3] dated January 15, 1998, which found co-appellant Dante Morales guilty of murder and sentenced him to death in absentia.

In Criminal Case No. 8512, the trial court found appellants Felipe Demate and Dante Morales guilty of frustrated murder. Each was sentenced to suffer imprisonment of ten (10) years and one (1) day of prison mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum, for the offense of frustrated murder. Before us now, appellant Demate does not seek an acquittal[4] but rather prays that he be adjudged guilty only of homicide and frustrated homicide instead of murder and frustrated murder, respectively.

The two cases are reviewed together as they arose from two related indictments against Demate and Morales for murder and frustrated murder filed by the Provincial Prosecutor of Batangas. In Criminal Case No. 8511 for murder, the accusatory portion of the Information reads:

That on or about the 26[th] day of May 1996, between 3:00 o’clock and 4:00 o’clock in the morning, at Sitio Alagao, Barangay Galamay-Amo, Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed instrument, conspiring and confederating together, acting in common accord and mutually helping each other, with intent to kill, with treachery and evident premeditation and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and hack with the said bladed instrument, one Jaime Ricablanca y Husmillo, suddenly and without warning, thereby inflicting upon the latter hack wounds on his back which directly caused his death.

Contrary to law.[5]

In Criminal Case No. 8512, Demate and Morales were charged with frustrated murder allegedly committed as follows:

That on or about the 26[th] day of May 1996, between 3:00 o’clock and 4:00 o’clock in the morning, at Sitio Alagao, Barangay Galamay-Amo, Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed instrument, conspiring and confederating together, acting in common accord and mutually helping each other, with intent to kill, with treachery, evident premeditation and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and hack with the said bladed instrument, one Violeta Ricablanca y Moog, suddenly

and without warning, thereby inflicting upon the latter hack wounds on her face which injuries required medical attendance and prevented her from performing her customary work for a period of more than thirty (30) days, the said accused thus performing all the acts of execution which should have produced the crime of murder, as a consequence, but which nevertheless did not produce it by reason of some cause independent of the will of the perpetrators, that is, because of the timely and able medical attendance rendered to the said offended party which prevented her death.

Contrary to law.[6]

When arraigned, with the assistance of counsel, Demate and Morales pleaded not guilty to both charges.[7] They waived pre-trial, and the cases against them proceeded to trial jointly.

On February 18, 1997, however, the trial court was informed that Morales had escaped from detention at the Batangas Provincial Jail.[8] He remains at large. Trial then proceeded against Morales in absentia. He was identified by Violeta Ricablanca in open court by means of his picture[9] in the record.[10]

Based on the records of the case, the following are the facts:

Felipe Demate is the stepbrother of his co-appellant Dante Morales.[11] About a year before the incident in question, Morales was employed by the spouses Jaime and Violeta Ricablanca in their poultry business.[12] However, he quit in April 1996.[13] The Ricablancas had a maid, Jimbie[14] Alfaño, who had been working with them for three (3) years. Morales introduced Demate to Jimbie[15] and the latter began courting her.[16] Jimbie did not spurn his affections and the two became quite close and Demate would usually visit her to pay court in the evenings.[17]

At about eight o'clock in the evening of May 24, 1996, Jimbie was outside the house of the Ricablancas in Sitio Alagao, Barangay Galamay-Amo, San Jose, Batangas. She was doing the family laundry when Demate, whom she knew as "Dodong Morales," engaged her in a conversation. Demate told her to open the door in front of the garage of her employer at 3:00 a.m. of May 26, 1996, a Sunday.[18] However, Demate did not tell her the reason for his request.

In the wee hours of the morning of May 26, 1996, Jimbie woke up at more or less three o'clock in the morning. She opened the door in front of the garage of the Ricablanca residence as per Demate's request.[19] Soon thereafter, she saw Demate at the stairs of the house. He repeated his request that she open the door. Jimbie opened the main door of the house, and then went back to her room.[20] Inside the house, Jaime and Violeta Ricablanca and their minor son, Joseph Ryan, were fast asleep in their respective rooms.

Suddenly Jimbie heard loud thuds coming from the middle room where her master, Jaime, was sleeping.[21] The commotion ("kalabugan sa kwartong kinatutulugan ng aking asawa") also woke up Violeta,[22] who heard her husband, Jaime uttering, "Papatayin mo ako, bakit mo ako papatayin?" ("You will kill me, why will you kill me?")[23] Violeta immediately rushed to Jaime's room, followed by Joseph Ryan who had also been awakened by the noise[24] and Jimbie.[25]

When she looked inside the room, Violeta saw Demate astride Jaime, who was still lying on the bed. Demate was repeatedly stabbing her husband.[26] She was around two (2) meters away from the bed and could clearly recognize Demate as the room was brightly lit by a 100-watt fluorescent lamp immediately outside the door.[27] Joseph Ryan peeped in and also saw Demate stab his father many times.[28] Jimbie also looked in and saw Demate stab her master.[29]

Violeta was about to enter the room when Demate turned towards her. On meeting her, he hacked her face with a bolo.[30] Violeta then ran outside to call for help. She then saw Morales near the garage of her house[31] and she

discovered that the garage door was unlocked.[32] On seeing her, Morales immediately fled.[33]

Meanwhile, Jimbie saw Demate run outside, jump over the terrace railing,[34] and follow Morales, whom she had earlier noticed near the area of the house where she usually washed clothes.[35] Morales had run away when he caught sight of Violeta approaching and shouting for help.

The neighbors of the Ricablancas who rushed to their aid immediately brought Jaime to a hospital. The bolo used by Demate was still embedded in his back.[36] On removing it, Violeta identified the bolo as the property of the Ricablancas,[37] taken from their kitchen. Jaime was beyond medical help, however, and he succumbed to his wounds.

Violeta sustained a hack wound on the right side of her face which caused serious damage to her facial muscles.[38] She was treated by Dr. Cesar Guillo, a surgeon of San Jose General Hospital. Dr. Guillo stated that while the wound by itself was not necessarily fatal per se,[39] nonetheless, it could have caused death from complications had no medical treatment been given.[40]

Dr. Antonio S. Vertido, a medico-legal officer of the National Bureau of Investigation (NBI) performed an autopsy on Jaime's remains. The autopsy report showed that Jaime sustained the following injuries:

Chopped wound, right, subauricular area, 6.0 x 5.0 cms.

Incised wounds: neck, posterior aspect, 5.0 cms., arm, right, postero-lateral aspect, middle third, 7.0 cms., hand, right, palmar aspect, thenar eminence, 8.0 cms.

Stab wounds, edges clean cut, each having a sharp and opposite contused extremities:

- 3.0 cms. long, located at the left anterior chest wall, 8.0 cms. from the anterior median line directed backwards, downwards and medially involving the skin and soft tissues into the thoracic cavity via the 2nd intercostal space, perforating upper lobe left lung with an approximate depth of 13.0 cms.

- 4.0 cms. long, located at the left anterior chest wall, 9.0 cms. from the anterior median line, directed backwards, upwards and medially involving the skin and soft tissues via the 6th intercostal space into the thoracic cavity, perforating lower lobe left lung with an approximate depth of 17.0 cms.

- 3.5 cms. long, located at the left infraclavicular area, 16.0 cms. from the posterior median line, directed forward, downward and medially involving the skin and soft tissues only with an approximate depth of 3.0 cms.

- 5.0 cms. long, gaping, located at the right supra scapular area, 15.0 cms. from the posterior median line, directed forward, downward and medially involving the skin and soft tissues into the thoracic cavity, perforating middle lobe, right lung with an approximate depth of 14.0 cms.

- 5.0 cms. long, located at the right posterior axillary, 19.0 cms. from the posterior median line, directed forward, upward and medially involving the skin and underlying soft tissues into the abdominal cavity incising the right lobe of the liver with an approximate depth of 16.0 cms.

- 1.0 cm. long, located at the left scapular area, 16.0 cms. from the posterior median line, directed forward, upward and medially involving the skin and soft tissues, into the thoracic cavity, piercing the upper lobe of the left lung with an approximate depth of 13.0 cms.

- 3.0 cms. long, located at the left arm, upper third, posterior aspect, 20.0 cms. where the left elbow, directed forward, upwards and medially involving the skin and underlying soft tissues and creating an EXIT wound, at the left arm, upper third antero-medial aspect, 7.5 cms. long, 21.0 cms. above the left elbow.

- 5.0 cms. long, located at the left arm, posterior aspect, middle third, 10.0 cms. above the left elbow, directed

forward, upwards and medially involving the skin and soft tissue and making an EXIT wound, 3.0 cms. and 15.0 cms. above the left elbow located at the left elbow anterior aspect, middle third.

- 4.0 cms long, located at the left arm, posterior aspect, lower third, 5.0 cms. above the left elbow directed forward, upward and medially involving the skin and soft tissue and making an EXIT, 3.0 cms. long, 10.0 cms above the left elbow at the left arm antero-medial aspect.[41]

In sum, the victim sustained one (1) chopped wound, four (4) incised wounds, and nine (9) stab wounds,[42] at least four (4) of which were serious in nature.[43] Dr. Vertido identified the cause of Jaime's death as "hemorrhage secondary to multiple stab wounds." [44]

After fleeing the scene of the crime, Demate and Morales went into hiding. Three months later, they were arrested in San Francisco, Quezon by elements of the Philippine National Police.

Demate raised the defense of alibi. He claimed that he was in his hometown, Aurora, Quezon at the time of the incident.[45] He denied having known or courted Jimbie, claiming that he only met her after his incarceration.[46] To corroborate his alibi, Demate presented one Nolito Olayes who testified that in April 1996, he knew for a fact that Demate was residing in Mabunga, San Francisco, Quezon, as they were neighbors there.[47]

The trial court found the prosecution's version convincing, stressing that the positive identification of Felipe Demate by the eyewitnesses made his defense of alibi untenable and accordingly decided Criminal Cases Nos. 8511 and 8512 in this wise:

WHEREFORE, in Criminal Case No. 8511, finding the accused Felipe Demate y Logana @ "Dodong Morales" GUILTY of MURDER with [the] generic aggravating circumstance of nighttime, he is hereby sentenced to a penalty of DEATH as imposed in Article 248 of Revised Penal Code, as amended by Section 6 of Republic Act 7659, otherwise known as the Heinous Crimes Act.

In Criminal Case No. 8512, the said accused is likewise found guilty of Frustrated Murder for which he is hereby sentenced to suffer imprisonment of Twelve (12) years and one (1) day of reclusion temporal, as the maximum, with a minimum of Ten (10) years and one (1) day of prision mayor.

Said accused is further ordered to pay the heirs of deceased Jaime Ricablanca in the following amounts: P50,000.00 as indemnity for death; P50,000.00 as actual damages and P100,000.00 as moral damages.

Accordingly, he is hereby ordered to be transferred to the National Penitentiary at Muntinlupa City where the death penalty shall be executed through lethal injection after this judgment shall have become final and executory.

Let the records of this case including exhibits and transcripts of stenographic notes consecutively numbered be transmitted immediately to the Supreme Court for automatic review.

SO ORDERED.[48]

With respect to Dante Morales, the trial court in its supplemental decision dated January 15, 1998, convicted him as follows:

WHEREFORE, in Criminal Case No. 8511, finding co-accused Dante Morales GUILTY OF MURDER as charged with [the] generic aggravating circumstance of nighttime, he is hereby sentenced to a penalty of DEATH as imposed in Article 248 of Revised Penal Code, as amended by Section 6 of Republic Act 7659, otherwise known as the Heinous Crimes Act.

In Criminal Case No. 8512, the said co-accused is likewise found guilty of Frustrated Murder for which he is hereby sentenced to suffer imprisonment of Twelve (12) years and one (1) day of reclusion temporal, as the

maximum, with a minimum of Ten (10) years and one (1) day of prision mayor.

Said co-accused is further ordered to pay the heirs of deceased Jaime Ricablanca in the following amounts: P50,000.00 as indemnity for death; P50,000.00 as actual damages and P100,000.00 as moral damages.

Let the records of this case including exhibits and transcripts of the stenographic notes consecutively numbered be transmitted immediately to the Supreme Court for automatic review.

This supplements and forms part of the Decision dated December 18, 1997 in the above entitled cases.

SO ORDERED.[49]

Before us, appellants submit the following assignment of errors:

- TRIAL COURT ERRED IN HOLDING THAT THE AGGRAVATING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION WERE PRESENT IN THE CASE AT BAR.
- TRIAL COURT ERRED IN STATING THAT THE AGGRAVATING CIRCUMSTANCE OF NIGHTTIME WAS ALSO PRESENT.
- TRIAL COURT ERRED IN SAYING THAT THE CRIME OF MURDER WAS COMMITTED BY THE ACCUSED-APPELLANTS.[50]

Appellants pray not for an acquittal or seek a reversal of their conviction, but merely modification of their conviction for murder and frustrated murder to homicide and frustrated homicide, respectively. The issues for our resolution relate to: (1) the sufficiency of the prosecution evidence to sustain the convictions; (2) the gravity of the offenses committed; and (3) the propriety of the penalties imposed on each of the appellants.

The records show that three prosecution eyewitnesses, namely: the victim's wife, Violeta Ricablanca; the victim's teenaged son, Joseph Ryan Ricablanca; and the Ricablancas' maid, Jimbie Alfaño, saw appellant Felipe Demate in the act of repeatedly stabbing Jaime Ricablanca inside the master's bedroom of the Ricablanca residence at the wee hours of the morning, on May 26, 1996. Demate was positively identified in open court by all three eyewitnesses. As for appellant Dante Morales, he was seen by both Violeta and Jimbie immediately outside the Ricablanca house at the time of the incident, acting as a look-out for Demate. Violeta positively identified Morales in open court based on his photo in the records.

These prosecution witnesses were intensively grilled on cross-examination, but their testimonies remained unshaken. Moreover, their testimony on the stabbing of Jaime Ricablanca is corroborated by the autopsy report of Dr. Antonio S. Vertido, a medico-legal officer of the NBI, to the effect that the victim suffered nine (9) stab wounds, one (1) chopped wound, and four (4) incised wounds resulting in his death.

That Violeta and Joseph Ryan were wife and son of the victim does not detract from their credibility, nor diminish the weight of their testimonies. Relatives of victims of crimes have a natural knack for remembering the face of the attacker and they, more than anybody else, would be concerned with vindicating the crime by having the felon brought before the bar of justice.[51] Appellants did not point to any improper motive on the part of the prosecution witnesses to testify falsely against them, or implicate them in the commission of heinous crimes. Hence, we can only conclude that no such improper motive exists and the testimonies of the prosecution witnesses are entitled to full faith and credit.[52]

Against the positive identification made by prosecution witnesses of Demate and Morales as the perpetrators of the crime, all that appellant Demate can offer is a shaky alibi. Alibi is a weak defense. Settled is the rule that the defense of alibi cannot prevail over the positive identification of the accused as the author of the crime by credible witnesses.[53]

In sum, we find no basis to doubt or dispute, much less overturn, the findings of the trial court that Demate repeatedly stabbed the victim, while Morales stood as his look-out. That both appellants were criminally liable for the unlawful death of the victim as principals by direct participation was amply shown by the testimonies of the prosecution eyewitnesses, coupled with the medical evidence on the victim's death. They constitute sufficient proof of the guilt of the appellants beyond cavil or doubt.

This brings us to the next issue for our resolution: Was the unlawful killing of Jaime Ricablanca murder or only homicide?

Appellants contend that it was error for the trial court to hold that the killing was murder qualified by treachery and evident premeditation. They argue that treachery cannot be appreciated in the instant case as a closer look at the testimonies of the prosecution eyewitnesses show that none of them saw how the attack commenced. Moreover, they claim it was erroneous for the trial court to rule that the victim was asleep when attacked, thus, making the killing treacherous. Appellants submit that the victim's utterances of "Papatayin mo ako, bakit mo ako papatayin?" clearly show that he was awake when assaulted.

For the appellee, the Office of the Solicitor General (OSG) counters that what the testimonies cited clearly show is that Demate unexpectedly and swiftly attacked the victim, whom he roused from sleep and mercilessly stabbed and hacked, while the victim was lying on his back. According to the OSG, these clearly show that the killing was attended by alevosia. Treachery must be appreciated where the onslaught was so swift that the victim, who had suddenly been awakened from his sleep, had no opportunity to defend himself, says the OSG.

Alevosia or treachery exists when the offender commits any of the crimes against persons which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[54] For treachery to be appreciated, the prosecution has the burden to prove that: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the offender consciously adopted the particular means, method, or form of attack employed by him.[55] We find that both elements have been proven in this case.

The victim was in bed, flat on his back, when the killer went on top of him and stabbed him several times.[56] The killing occurred at three o'clock in the morning, an hour when generally people are asleep. The victim had been awakened when the killer entered the room and on seeing the latter armed with a bolo, he remarked, "Papatayin mo ako, bakit mo ako papatayin?" Evidently the victim was caught unaware totally defenseless against the armed invader. Even when the victim was warned of the danger to his person as long as the execution of the attack made it impossible for the victim to defend himself or to retaliate, treachery could be appreciated.[57]

Violeta Ricablanca testified that the attack upon her husband, including the assault made by Demate on her person, lasted only five seconds or less.[58] In other words, the assault was executed with swiftness, which caught the victim helpless. In his position (lying in bed) and condition (newly awakened from sleep), the victim was deprived of any real chance to defend himself, much less retaliate against his attacker. What is decisive in an appreciation of treachery is that the execution of the attack made it impossible for the victim to defend himself. Hence, we find that the trial court did not err in ruling that the killing of Jaime Ricablanca as well as the wounding of his wife, Violeta Ricablanca, was attended by treachery.

Appellants next argue that it was erroneous for the trial court to rule there was evident premeditation merely from Demate's instructions to the maid, Jimbie Alfaño, to open the door of the victim's house at 3:00 a.m. of May 26, 1996. They stress that Jimbie categorically stated on the witness stand that Demate did not disclose to her the reason or motive behind his request. Hence, they contend there is no basis to infer from said request that Demate carefully planned to surreptitiously enter the victim's house for the purpose of killing its owner.

The Solicitor General points out, however, that a careful study of the facts of the case shows that the appellants carefully planned and reflected upon their plan, to wit: (1) Morales used to work at the poultry farm of the Ricablanca but left without word one month before the incident. (2) Morales introduced his stepbrother and co-appellant Demate to Jimbie, the Ricablanca's maid, and the latter began a romantic dalliance with her. (3) At around 3:00 a.m. of April 16, 1996, Jimbie let Demate inside the Ricablanca dwelling and the latter stole P14,000.00 in cash from the victim's room (Criminal Case No. 8510). (4) Around 8:00 p.m. of May 24, 1996, Demate again asked Jimbie to open the door of the Ricablanca residence for him at 3:00 a.m. of May 26, 1996. (5) Sometime around three o'clock in the morning of May 26, 1996, Jimbie did open the door of the Ricablanca residence to let Demate in, while Morales stood guard. Demate then proceeded to the master's bedroom where the killing occurred. The OSG submits that the foregoing circumstances clearly showed the appellants' predetermined plan to harm the victim and his family should they get in the way of their attempt to steal some more from the Ricablanca. The Solicitor General lays great weight on the fact that appellants had stolen from the Ricablanca previously. Apparently dissatisfied with their loot, they wanted more and were prepared to kill to get it.

Like any aggravating or qualifying circumstance, evident premeditation must be established with equal certainty and clarity as the crime itself.[59] To prove evident premeditation, the prosecution is tasked to show: (1) the time when the offender determined to commit the crime; (2) an act indicating that the offender had clung to his determination; and (3) sufficient lapse of time between the determination to commit the crime and the execution thereof to allow the offender to reflect upon the consequences of his act.[60] Evident premeditation is not presumed from the mere lapse of time.[61] It may only be appreciated when the execution of the crime is preceded by cool thought and deliberate reflection upon the resolution to carry out the felonious intent during the space of time sufficient to arrive at a calm judgment.[62]

Despite the OSG's vigorous submission, we are not prepared to accept that evident premeditation can be appreciated against appellants. The record is less than clear as to when and how the killing was planned. Whether the plan was only to steal valuables from the victims, or to kill them as well if they got in the way, is not discernible from the record. Jimbie testified that Demate did not tell her the reason why he wanted her to open the door of the Ricablanca house come 3:00 a.m. of May 26, 1996. We are not free to speculate that the request was made by appellants with murder or robbery or both in their minds. Absent a clear showing of its requisites, we are here constrained to rule out evident premeditation.

Appellants next fault the trial court for appreciating the aggravating circumstance of nighttime against them. They contend that the mere fact that Demate entered the house of the victim at around three o'clock in the morning of May 26, 1996, does not necessarily mean that appellants took advantage of darkness when the alleged offense took place.

The Solicitor General, in turn, points out that under Article 13[63] of the Civil Code the offense was committed at nighttime, having been committed before the sunrise. Hence, under Article 14 (6)[64] of the Revised Penal Code, nocturnity should be appreciated as an aggravating circumstance. It is clear that in committing the crime at three o'clock in the morning, the appellants purposely sought the cover of darkness to make it difficult for them to be identified, says the OSG.

There are two tests for nocturnity as an aggravating circumstance. First is the objective test, under which nocturnity is aggravating because it facilitates the commission of the offense. Second is the subjective test, under which nocturnity is aggravating because it was purposely sought by the offender. The two tests should be applied in the alternative.[65] When appellant Demate asked the housemaid to let him inside her master's house at 3:00 a.m., we can grant that the subjective test was passed. However, in the imposition of the penalty on appellants, we

cannot appreciate the aggravating circumstance of nighttime for two reasons. First, the aggravating circumstance of nighttime is already absorbed by treachery.[66] Second, the Information in Criminal Case No. 8511 did not specifically allege the aggravating circumstance of nighttime. Under the 2000 Rules of Criminal Procedure, which should be given retroactive effect following the rule that statutes governing court proceedings will be construed as applicable to actions pending and undetermined at the time of their passage,[67] every Information must state not only the qualifying but also the aggravating circumstances.[68] Hence, since the aggravating circumstance of nighttime was not alleged in the Information in Criminal Case No. 8511, it could not be appreciated against the appellants.

Under Article 248[69] of the Revised Penal Code, as amended, the penalty for murder is reclusion perpetua to death. Absent any aggravating or mitigating circumstances attending the crime, the lesser of the two indivisible penalties must be applied. Thus, in Criminal Case No. 8511, the imposable penalty is not death but only reclusion perpetua.

In Criminal Case No. 8512, for frustrated murder, the penalty to be imposed shall, pursuant to Article 50[70] of the Revised Penal Code, be one degree lower than that for consummated murder. Under Article 61 (2)[71] of said Code, the penalty next lower in degree is reclusion temporal, whose duration is from 12 years and 1 day to 20 years. There being neither aggravating nor mitigating circumstances, the penalty should be applied in its medium period or from 14 years, 8 months, and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law, the penalty to be imposed should be within the range of 10 years and 1 day of prision mayor to 14 years and 8 months of reclusion temporal. Thus, we find the penalty imposed by the trial court in Criminal Case No. 8512 to be in order.

However, there is need to modify the award of damages. In Criminal Case No. 8511, following current case law, the heirs of Jaime Ricablanca are entitled to P50,000.00 as indemnity ex delicto. The award of moral damages, however, should be reduced from P100,000.00 to P50,000.00.[72] In addition, exemplary damages in the amount of P25,000.00 must be awarded, considering the attendance of treachery, which qualified the killing to murder.[73] Under Article 2230 of the Civil Code, exemplary damages may be imposed as part of the civil liability when the crime was committed with one or more aggravating circumstances. The term aggravating circumstance as used therein should be construed in its generic sense since the law did not specify otherwise.

The award by the trial court of P50,000.00 as actual damages should be reduced to P45,000.00, based on the supporting receipt. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable to the injured party.[74]

Finally, in Criminal Case No. 8512, the victim Violeta Ricablanca is entitled to actual damages in the amount of P67,380.00 for medical and dental bills, which are duly supported by competent evidence.

WHEREFORE, the decision of the Regional Trial Court of Batangas City, Branch 84, dated December 18, 1997, finding appellant FELIPE DEMATE Y LOGANA alias “Dodong Morales” guilty of murder beyond reasonable doubt, and its supplemental decision dated January 15, 1998, finding appellant DANTE MORALES guilty beyond reasonable doubt of murder, in Criminal Case No. 8511, are AFFIRMED with MODIFICATION. Their respective sentences are hereby REDUCED TO RECLUSION PERPETUA. Further, appellants Demate and Morales are hereby ORDERED to pay jointly and severally the heirs of the victim the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P45,000.00 as actual damages, and P25,000.00 as exemplary damages.

In Criminal Case No. 8512, the decision and supplemental decision of the trial court finding Demate and Morales

guilty beyond reasonable doubt of frustrated murder and sentencing each of them to a prison term of 10 years and 1 day of prision mayor as minimum to 12 years and 1 day of reclusion temporal as maximum, are AFFIRMED with the MODIFICATION that the appellants are also ORDERED to pay jointly and severally the victim, Violeta Ricablanca, the sum of P67,380.00 as actual damages.

Let a warrant of arrest issue against DANTE MORALES, for the immediate service of his sentence. The Director General, Philippine National Police, is hereby DIRECTED to effect immediate service of said warrant of arrest, and to report to this Court the results thereof within 10 days from such service.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Records, Decision dated December 11, 1997, pp. 148-153.

[2] In another case, Criminal Case No. 8510, the RTC of Batangas City, Branch 84, convicted herein appellant Felipe Demate y Logana of theft and sentenced him to six (6) years of prision correccional as a minimum and ten (10) years and one (1) day of prision mayor as a maximum and to indemnify the private complainant, Violeta Ricablanca, who is also the victim in Criminal Case No. 8512, the sum of P14,700.00. See Records, Criminal Case No. 8510, p. 170. While the records of Criminal Case No. 8510 were forwarded to this Court along with the records of Criminal Cases Nos. 8511-12, the same is not covered by our automatic review.

[3] Supra, note 1 at 155-156.

[4] Rollo, p. 73.

[5] Records, Criminal Case No. 8511, pp. 1-2.

[6] Records, Criminal Case No. 8512, pp. 1-2.

[7] See Records, Criminal Case No. 8511, p. 30; Records, Criminal Case No. 8512, p. 31.

[8] Records, Criminal Case No. 8511, p. 73.

[9] Exh. "H," Id. at 110.

[10] TSN, 10 March 1997, pp. 30-31.

[11] TSN, 6 October 1997, p. 8.

[12] TSN, 10 March 1997, p. 31; TSN, 17 June 1997, p. 14.

[13] TSN, 22 July 1997, p. 14.

[14] Also spelled "Gimbie" in some portions of the records.

[15] TSN, 22 July 1997, p. 6.

[16] Id. at 7.

[17] Id. at 32-33.

[18] Id. at 4. See also TSN, 25 August 1997, pp. 3, 6-7, 9-10.

- [19] Id. at 5, 22.
- [20] Id. at 8. See also TSN, 25 August 1997, p. 11.
- [21] Id. at 8-9.
- [22] TSN, 10 March 1997, p. 21.
- [23] Id. at 22. See also TSN, 17 June 1997, pp. 4-5.
- [24] TSN, 14 May 1997, pp. 5, 26.
- [25] TSN, 22 July 1997, p. 9.
- [26] TSN, 10 March 1997, p. 22.
- [27] Id. at 22-23.
- [28] TSN, 14 May 1997, pp. 5-6, 27-28.
- [29] TSN, 22 July 1997, pp. 9-10.
- [30] TSN, 10 March 1997, p. 23. See also TSN, 17 June 1997, pp. 13, 18.
- [31] Id. at 25.
- [32] Id. at 26.
- [33] Ibid.
- [34] TSN, 22 July 1997, p. 12. See also TSN, 25 August 1997, p. 27.
- [35] Id. at 12-13.
- [36] TSN, 10 March 1997, p. 28.
- [37] Id. at 23, 29.
- [38] TSN, 9 January 1997, pp. 5-6.
- [39] Id. at 8.
- [40] Id. at 6.
- [41] Exh. "D" and submarkings, Records, Criminal Case No. 8511, p. 91 and dorsal side.
- [42] TSN, 10 March 1997, pp. 6-7.
- [43] Id. at 8-11, 15.
- [44] Supra, note 41.
- [45] TSN, 6 October 1997, pp. 4-5, 7.
- [46] Id. at 5.
- [47] TSN, 12 November 1997, pp. 6-8, 14-16.
- [48] Records, Criminal Case No. 8511, pp. 152-153.
- [49] Id. at 155-156.

[50] Rollo, p. 68.

[51] *People v. Montemayor*, G.R. No. 125305, 18 June 2003, p. 14.

[52] *People v. Aguilos*, G.R. No. 121828, 27 June 2003, p. 10, citing *People v. Mendoza*, G.R. Nos. 145339-42, 26 November 2002, pp. 11-12.

[53] *People v. Torio*, G.R. No. 122109, 25 June 2003, p. 18.

[54] *People v. Inggo*, G.R. No. 140872, 23 June 2003, p. 11.

[55] *People v. Esponilla*, G.R. No. 122766, 20 June 2003, p. 22.

[56] See TSN, 17 June 1997, p. 20; TSN, 14 May 1997, p. 6.

[57] *People v. Musa, Jr.*, G.R. No. 137042, 17 June 2003, p. 5, citing *People v. Tanoy*, G.R. No. 115692, 12 May 2000, 332 SCRA 12, 18.

[58] TSN, 17 June 1997, pp. 24-25.

[59] *People v. Baldogo*, G.R. Nos. 128106-07, 24 January 2003, p. 24.

[60] *People v. Annibong*, G.R. No. 139879, 8 May 2003, p. 10.

[61] *People v. Bisio*, G.R. Nos. 111098-99, 3 April 2003, p. 9.

[62] *People v. Sapigao*, G.R. No. 144975, 18 June 2003, p. 21.

[63] ART. 13. When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.

...

[64] ART. 14. Aggravating circumstances. – The following are aggravating circumstances:

...

(6) That the crime be committed in the nighttime or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense.

[65] *People v. Parazo*, 338 Phil. 1010, 1021 (1997).

[66] *People v. Melendres, Jr.*, G.R. No. 134940, 30 April 2003, p. 23.

[67] *People v. Delos Santos*, G.R. No. 135919, 9 May 2003, p. 15.

[68] Rule 110, 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.

[69] ART. 248. Murder. – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death....

...

[70] ART. 50. Penalty to be imposed upon principals of a frustrated crime. – The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principals in a frustrated felony.

[71] ART. 61. Rules of graduating penalties. – For the purpose of graduating the penalties which, according to the provisions of Articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

...

(2) When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

[72] People v. Aguilos, G.R. No. 121828, 27 June 2003, p. 19.

[73] People v. Pidoy, G.R. No. 146696, 3 July 2003, p. 10.

[74] People v. Suelto, 381 Phil. 851, 869 (2000).

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