

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.,
REYNALDO LANGIT, ACCUSED-APPELLANT.**

G.R. Nos. 134757-58. August 04, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In instances where separate trials are held for each of the accused, are the findings of the first judge who heard the case and acquitted one or more co-accused, binding on the second judge who presided over the trial of the remaining accused? This is the primary issue sought to be resolved in the present appeal.

On 26 September 1995, an Information docketed as Criminal Case No. CR-9501109-D was filed before the Regional Trial Court of Dagupan City, Branch 41 charging accused-appellant Reynaldo Langit with the crime of Illegal Possession of Firearm and Ammunition,[1] committed as follows:

That on or about July 23, 1995 at [B]arangay Lekep, [M]unicipality of San Fabian, [P]rovince of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously have in his possession, control and custody one (1) cal. .38 handgun w/out first securing the necessary permit/license to possess the same, which firearm was used in shooting to death Abelardo Velasquez.

Contrary to P.D. 1866 as amended.[2]

Thereafter, on 2 October 1995, an Information for murder arising from the same incident that occurred on 23 July 1995 was filed against the same accused-appellant Reynaldo Langit, Diong Docusin and Patricio Clauna, also before the same Branch 41, docketed as Criminal Case No. CR-95-01115-D, to wit:

That on or about July 23, 1995 in the morning at [B]arangay Lekep, [M]unicipality of San Fabian, [P]rovince of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with stones and a cal. 38 handgun with intent to kill, treachery, evident premeditation and taking advantage of their superior strength, conspiring, confederating and mutually helping one another, did, then and there willfully, unlawfully and feloniously attack, hold club with stones and shoot Abelardo Velasquez, inflicting the following injuries:

Point of entry of bullet: 0.5 x 0.5 cm occipital area, R. with contusion collar 1 x 1 cm.

No point of exit

0.7 x 0.7 cm. point of entry of bullet, R occipital area of brain superior imposed on a 2 x 2 cm location subdunal hemorrhage

Foreign body recovered within the brain tissue which caused his instantaneous death, to the damage and prejudice of his heirs.

CONTRARY to ART. 248 of the Revised Penal Code, as amended by R.A. 7659.[3]

The three accused were not immediately arrested because they were at large. It was on 26 October 1995 that Diong Docusin was arrested at the San Carlos City General Hospital. After arraignment on 7 March 1996, where he pleaded not guilty, and trial, he was acquitted on 29 April 1996, by Judge Victor Llamas, Jr., for failure of the prosecution to establish his guilt beyond reasonable doubt. The dispositive portion of the decision reads:

WHEREFORE, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, accused Diong Docusin is hereby acquitted of the crime charged in the information.

In the civil aspect of this case, judgment is hereby rendered ordering said accused to pay the heirs of the deceased an amount of P30,000.00 as compensation for the loss of life of the victim and temperate and moral damages in the amount of P30,000.00, plus attorney's fees in the amount of P20,000.00.

SO ORDERED.[4]

On 15 May 1996, Patricio Clauna was arrested and, thereafter, arraigned and tried. In a decision, dated 9 August 1966, Judge Llamas also acquitted Patricio Clauna due to the failure of the prosecution to establish his guilt beyond reasonable doubt, the dispositive portion of which states:

WHEREFORE, for failure of the prosecution to prove the guilt of accused Patricio Clauna, he is hereby acquitted.

In the civil aspect of this case, judgment is hereby rendered holding accused liable for his contributory act resulting in the death of the above-named deceased so that he is hereby ordered to indemnify the heirs of said victim in the amount of P30,000.00 as compensation for loss of life; P30,000.00 as moral damages and P20,000.00 as attorney's fees.

SO ORDERED.[5]

Subsequently, accused-appellant surrendered to Mayor Romulo Magliba of the Municipality of San Fabian, Pangasinan. When arraigned, accused-appellant, assisted by his counsel, pleaded not guilty to both informations and trial proceeded in due course. The cases against him were consolidated having arisen from the same incident and, as such, joint hearings were conducted.

The prosecution presented as its witnesses Prudencio Serote, Gemma Velasquez (the wife of the victim), SPO3 Romeo de Guzman and PO2 Francisco Castillo.

Prudencio Serote testified that in the morning of 23 July 1995, while plying his motorized tricycle along a road in Barangay Lekep, San Fabian, Pangasinan, he saw, from a distance of around 15 meters,[6] Abelardo Velasquez struggling while being held in one arm by Diong Docusin and by Patricio Clauna in the other arm.[7] He then heard Patricio Clauna tell accused-appellant: "Apuram pare" (Hurry up).[8] Thereupon, accused-appellant came out from the bamboo grooves, pointed his revolver at Velasquez and shot him on the head.[9] After regaining his composure, Serote proceeded to the house of the victim to inform the latter's wife of what transpired.[10] They then went to the scene where they saw the victim sprawled on the ground already dead.[11]

Gemma Velasquez testified that she had known accused for a long time. Prior to the shooting of her husband, there was an incident where she was accosted by accused-appellant along a road. In that incident, accused-appellant embraced her, mashed her breast and pulled up her dress causing it to be torn. She struggled to free herself and was able to run away.[12] Because of this incident, she filed a complaint for acts of lasciviousness against accused-appellant and, on the basis of which, the corresponding information against him was filed by the Provincial Prosecutor before the Municipal Circuit Trial Court of San Fabian.[13]

Gemma Velasquez further testified that her husband left her with four children and that due to his death, she could

not eat nor sleep and that she felt very sad.[14] If her sufferings would be quantified, she was entitled to an amount of One Hundred Thousand Pesos (P100,000.00).[15] For her husband's funeral, she incurred Sixteen Thousand One Hundred and Thirty Pesos (P16,130.00) in expenses.[16] She further stated that when her husband died, he was only thirty-three (33) years old and that he earned an average of One Hundred Fifty Pesos (P150.00) a day as a carpenter.[17] She paid her lawyer Fifty Thousand Pesos (P50,000.00), plus an additional Five Hundred Pesos (P500.00) for every hearing.[18]

PO3 Francisco Castillo testified that he logged Entry No. 27 in the police blotter stating that at around ten o'clock in the morning of 23 July 1995, a radio message was received from Barangay Captain Lalata of Barangay Lekep that Abelardo Velasquez was shot by accused-appellant, Diong Docusin and Patricio Clauna.[19] He also declared that two entries in the police blotter stated that the wife of accused-appellant, Evangeline Langit, went to the police station and requested to record in the blotter that her husband had voluntarily surrendered to Mayor Romulo Magliba.[20] The police tried to verify the report but they were unable to do so as they could not locate nor contact Mayor Romulo Magliba.[21]

SPO3 Romeo de Guzman testified that he is a member of the Philippine National Police assigned with the Firearms and Explosives Division.[22] His function is to comply with subpoenas duces tecum issued by courts with regard to queries regarding gun licenses.[23] As such, his duty is to verify from the records of their office whether a certain individual has been granted a license with respect to a particular firearm.[24] In this regard, he identified the certification issued by his immediate superior to the effect that there is no record that accused-appellant is a licensed or registered holder of any type of firearm.[25]

The prosecution tried to present as its witness Dr. Amelyn U. Ramos, the municipal health officer who performed the autopsy on Abelardo Velasquez and who rendered the corresponding autopsy report. Previously, she testified as a witness for the prosecution at the trial of Diong Docusin and Patricio Clauna. However, at the trial of accused-appellant, Dr. Ramos begged to be excused because of her delicate pregnancy due to a threatened abortion. Her obstetrician advised her to refrain from leaving their house until such time that she delivered her baby.[26] Because of this predicament, the prosecution contented itself with presenting her autopsy report in evidence, the existence of which the defense readily admitted. It should be noted at this point that, during the hearing of accused-appellant's application for bail, the prosecution filed with the trial court a manifestation that they were adopting the evidence already presented during the trials of Diong Docusin and Patricio Clauna as part of the prosecution's evidence against accused-appellant.[27]

The defense presented three witnesses, accused-appellant himself, Antonio Ulanday and Trinidad Serote. Accused-appellant denied having killed Abelardo Velasquez.[28] He explained that when the incident happened, he was at the house of Antonio Ulanday in Poblacion, San Fabian, helping the latter cement the side of his house.[29] He stated that the distance between the house of Antonio Ulanday and the place where Abelardo Velasquez was killed is more than two (2) kilometers. He stayed from seven o'clock in the morning until seven o'clock in the evening at the house of Antonio Ulanday and that at no time did he leave the said house.[30] He averred that a possible reason why he was being implicated in the killing of Abelardo Velasquez was because he had previously filed a case for frustrated murder against the victim.[31] On cross-examination, accused-appellant admitted that the day after the subject incident, he and his family left San Fabian to go to Alcala, Pangasinan.[32] He claimed that, at that time, he did not know that the police was looking for him.[33] Occasionally, he would visit San Fabian and, thereafter, return to Alcala.[34] During one of his visits to San Fabian in 1997, he learned that he was being made accountable for the death of Abelardo Velasquez but he did nothing about it since he had no knowledge about the said killing.[35] With regard to his co-accused, he stated that he knew both of them since Diong Docusin is his cousin and Patricio Clauna is the godson of his father.[36] He denied the assertion of the

prosecution that his wife reported to the police that he had voluntarily surrendered to the mayor of San Fabian. He said that he never went to the mayor,[37] although he admitted that he personally knew him.[38]

Trinidad Serote declared that on 23 July 1995, she was harvesting rice together with her son, Prudencio Serote.[39] They went to the rice field at around six-forty in the morning and finished their work at noontime.[40] She further stated that Prudencio Serote never left the field from the time they went there until the time they finished their work.[41] The distance of the rice field to the place where the incident happened is about one (1) kilometer. Upon being asked about her relationship with her son, Prudencio Serote, the witness alleged that as of 23 July 1995 he no longer lived with her[42] due to a misunderstanding between Prudencio Serote and her other son, Loreto Serote, which resulted in the hacking of Loreto by Prudencio.

Antonio Ulanday testified that on 23 July 1995, accused-appellant was at his residence since the latter helped him cement the side of his house.[43] He stated that accused-appellant went to his house at seven o'clock in the morning and had breakfast there.[44] Thereafter, at eight o'clock, they proceeded to do their work.[45] They finished at five o'clock in the afternoon but accused-appellant did not leave yet since the witness let him have dinner at his house.[46] In this regard, the witness claimed that accused-appellant never left his house the whole day of 23 July 1995.[47] He also stated that the distance from his house to the place where the incident happened is two (2) kilometers.[48]

After trial, the regional trial court, now presided by Judge Erna Falloran Aliposa who succeeded Judge Llamas, rendered its decision, dated 1 April 1998, finding accused-appellant guilty of aggravated illegal possession of firearm and murder. The dispositive portion reads:

PREMISES CONSIDERED, in Criminal Case No. 95-01109-D, the Court finds the accused Reynaldo Langit guilty beyond reasonable doubt of the crime of aggravated illegal possession of firearm punished under Section 1 of P.D. 1866, as amended and hereby sentences said accused to suffer the penalty of Reclusion Perpetua. In Criminal Case No. 95-01115-D, the Court finds the accused Reynaldo Langit guilty beyond reasonable doubt of the crime of Murder, punished under Article 248 of the Revised Penal Code, as amended by R.A. 7659, and hereby sentences him to suffer the penalty of Reclusion Perpetua.

The accused is further ordered to pay the heirs of the victim the amount of P50,000.00, as indemnity for his death, another amount of P50,000.00, as moral damages, and P16,130.00, for funeral expenses.

SO ORDERED.[49]

Accused-appellant is now before us asserting that the trial court erred in:

- CONSIDERING THE SLUG ALLEGEDLY RECOVERED FROM THE BRAIN TISSUE OF THE VICTIM AS EVIDENCE (EXH. "B"), WHEN ITS PROBATIVE VALUE IS SUSPECT AS COMING FROM A POLLUTED SOURCE, WORTHLESS OF CONSIDERATION BY THIS HONORABLE COURT.
- GIVING MORE WEIGHT AND CREDENCE TO THE PERJURED TESTIMONY AND SWORN STATEMENT OF PROSECUTION WITNESS PRUDENCIO SEROTE IN CONTRAST WITH THE MORE POSITIVE AND STRAIGHTFORWARD MANNER OF TESTIFYING BY WITNESS TRINIDAD SEROTE.
- FAILING TO CONSIDER THE EVIDENCE PRESENTED BY APPELLANT WHICH TENDED TO PROVE THAT THE VICTIM WAS NOT EXACTLY A PEACEFUL INNOCENT PERSON, IN FACT HIS POLICE RECORD TENDED TO SHOW THAT HE WAS A POLICE CHARACTER IN THE COMMUNITY WITH CRIMINAL CASES, AND THAT ANYONE OF HIS VICTIMS IN THOSE CASES MAY HAVE DONE ABELARDO VELASQUEZ IN SWEET REVENGE OTHER THAN APPELLANT.[50]

We shall first jointly discuss accused-appellant's second and third assignments of error which essentially focused

on accused-appellant's argument for his acquittal on the basis of the prior findings of fact and appreciation of the evidence made by Judge Llamas in the cases of Diong Docusin and Patricio Clauna, since the same evidence was allegedly presented by the prosecution before the two judges in the three separate trials for the murder of Abelardo Velasquez. In support of this argument, accused-appellant quotes from the decision of Judge Llamas in the case of Diong Docusin in reference to the testimony of prosecution witness Prudencio Serote, to wit:

Witness Prudencio Serote claims to have witnessed the crime because at that particular moment, he was unloading a passenger from his tricycle facing them at a short distance. However, his mother appeared in court and cast a doubt on his testimony by testifying that when the crime took place, her son was with him a kilometer away in the ricefields (sic) transplanting rice seedlings. She testified in a positive and straightforward manner with a demeanor and a manner of speaking which was free from nervousness and uncertainty.

On direct and cross-examination this witness testified that he saw accused Diong Docusin and Patricio Clauna come (sic) from the westerly direction as they met the deceased, who was on his way home. Suddenly, each of them grabbed the wrist and arm of the latter. While twisting the arm of the victim and pinning it behind him, Clauna struck him on the nape with a piece of stone. In his sworn statement to the police, he declared that the victim fell on the ground. While there crawling, accused Langit came near and shot him at close range.

In court, however, said witness testified that after hitting his victim, Clauna called for accused Langit to hurry up. The latter then appeared and shot the victim on the head while being held by the duo. It was after he was shot that the victim allegedly fell on the ground, a version apparently in contrast with what said witness declared before the police on July 25, 1995.[51]

Moreover, accused-appellant posits that more weight should be given to the appreciation made by Judge Llamas of the testimony of Prudencio Serote inasmuch as when Judge Llamas heard the said witness' testimony, it was during the trial on the merits of the case. In comparison, accused-appellant points out, the only time Judge Aliposa heard the testimony of Prudencio Serote was only during accused-appellant's application for bail since the prosecution merely contended itself in adopting the said witness' testimony as part of the evidence on the merits of his case. Thus, accused-appellant argues that, like Judge Llamas, Judge Aliposa should have disregarded the testimony of Prudencio Serote and acquitted him of the charges. We are not convinced.

The appreciation of one judge of the testimony of a certain witness is not binding on another judge who heard the testimony of the same witness on the same matter. Each magistrate who hears the testimony of a witness is called upon to make his own appreciation of the evidence. It is, therefore, illogical to argue that because one judge made a conclusion in a certain way with respect to one or more of the accused necessarily dictates that the succeeding judge who heard the same case against the other accused should automatically make the same conclusion.

Besides, not much facts and persuasive conclusions can be drawn from the decision of Judge Llamas acquitting Diong Docusin from the offenses charged. At certain parts of the decision, the judge found evidence of criminal culpability of the three accused and a clear statement of conspiracy between them:

It is quite apparent in the aforestated narration of the two prosecution witnesses that all of the accused participated in the killing of the accused by simultaneous and concerted acts, consistent with a common criminal intent clearly demonstrating that all of them acted in conspiracy (*People vs. Pajenado, et al.*, 69 SCRA 172, 179). For as said Prudencio Serote said, Diong Docusin and Clauna held the wrist and arm of the deceased, while accused Langit shot him with a revolver.

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The defense of accused Docusin that he was elsewhere at the time of the killing cannot be accorded much credence or significance whatsoever, because not only is it uncorroborated, it was not shown that he was so far away from the scene of the crime which will eliminate any possibility whatsoever that he could get in contact

with the victim (People vs. Liera, 82 SCRA 163, 171). Furthermore, even if the testimony of witness Prudencio Serote was imperfect, said accused was clearly identified to have been the same person who held the wrist of the deceased when he was shot by accused Langit. His alibi cannot therefore discredit the positive testimony of witness Serote in this regard (People vs. Yutilla, 102 SCRA 264, 272).[52]

However, at another point of the decision, a self-contradiction is obvious from the following statements:

What the court cannot understand, however, is if the group acted in concert, consistent with a common criminal design to kill him and they had a gun, why was it still necessary for both Docusin and Clauna to hold and pin him so that he can be shot? Why did they not simply waylay and shoot him to avoid being recognized and apprehended?

Is it not possible that the killing merely sprang from a brawl where both Docusin and Clauna were present and, not knowing that Langit had a gun or the intent to use it, they participated in the fight?

It appears from the aforestated circumstances that all that accused Docusin did was to hold the wrist of the deceased. He was not previously seen in company with both his co-accused. After the shooting, all of them scampered in different directions.[53]

A perusal of the decision of Judge Llamas acquitting Patricio Clauna is, likewise, tinged with the same ambivalent and seemingly inconsistent statements:

It is quite apparent in the aforestated narration of the two prosecution witnesses that all of the accused by simultaneous and concerted acts, consistent with a common criminal intent clearly demonstrating that all of them acted in conspiracy (People vs. Pajenado, et al., 69 SCRA 172, 179). For as said Prudencio Serote said, Diong Docusin and Clauna held the wrist and arm of the deceased, while accused Langit shot him with a revolver.

What the court cannot understand, however, is if the group acted in concert, consistent with a common criminal design to kill him and they had a gun, why was it still necessary for both Docusin and Clauna to hold and pin him so that he can be shot? Why did they not simply waylay and shoot him to avoid being recognized and apprehended?

Is it not possible that the killing merely sprang from a brawl where both Docusin and Clauna were present and, not knowing that Langit had a gun or the intent to use it, they participated in the fight?[54]

Whether Judge Llamas committed an error in acquitting Diong Docusin and Patricio Clauna for the same offenses of which accused-appellant was convicted by Judge Aliposa is a matter which is already beyond the review of this Court. The principle of double jeopardy prohibits it. However, errors of judgment made by a judge should, undeniably, not be made binding on another judge.

On the other hand, Judge Aliposa's decision centered on the fact that accused-appellant was the principal author in the death of Abelardo Velasquez, to wit:

The Court rejects the defense of alibi interposed by the accused because he was positively identified by a credible witness Prudencio Serote. It is a fundamental judicial dictum that the defense of alibi cannot prevail over the positive identification of the perpetrator of the crime. Eyewitness Prudencio Serote categorically and clearly declared that at a distance of about 15 meters, he saw the accused come out from the bamboo grooves, point his gun at Velasquez and shoot the victim on the head, while his hands were being held by Diong Docusin and Patricio Clauna. After shooting the victim, the accused ran away bringing with him the firearm, which the witness identified as a .38 caliber revolver. This firearm was never recovered.

It is also evident that the accused, with the victim's two hands rendered immobile, had taken advantage of his superior strength and had employed treacherous means to weaken the victim's defense, thereby qualifying the

killing to murder.

There is no reason for Prudencio Serote to testify falsely against the accused. They are barriomates and no ill motive was shown for Serote to implicate the accused in the death of Velasquez.

The defense of the accused, corroborated by the testimony of Antonio Ulanday, his “compadre,” that he was at his house at Barangay Poblacion when the crime was committed is petty, unconvincing and deserves scant consideration. In order for the defense of alibi to prosper, the accused must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. As testified by the accused, the house of Ulanday is only two kilometers away from where the shooting incident happened. It was, therefore, not physically impossible for the accused to have been at the scene of the crime at the time of its commission. Moreover, this Court doubts the credibility of Ulanday, for having kept silent for two years, if indeed his “compadre” Reynaldo Langit is innocent, and was in his house when the killing of Velasquez took place.

The testimony of the accused that on the day following the shooting incident, he left San Fabian and brought his family to Alcala, Pangasinan only served to bolster his guilt. Flight is an indication of guilt. For two years, the accused remained in hiding and evaded the warrant of arrest issued against him.

Likewise, the declaration of Trinidad Serote that her son, Prudencio Serote, the eyewitness in this case, was with her in the field at the time of the incident is not worthy of credence. This court is not convinced that she was telling the truth. On cross-examination, she admitted that on July 23, 1995, her son Prudencio was not living with her anymore because of a previous misunderstanding between them and that in fact she filed a case of grave threats against Prudencio before the Municipal Circuit Trial Court of San Fabian.

In conformity with the doctrine laid down in *People vs. Tac-an*, 182 SCRA 601; *People vs. Tiozon*, 198 SCRA 368; and *People vs. Caling*, 208 SCRA 821, and reiterated in *People vs. Quijada*, 259 SCRA 191, this Court finds the accused guilty of two separate offenses of murder and aggravated illegal possession of firearm as charged.

The finding of Judge Aliposa that accused-appellant is liable for the death of Abelardo Velasquez is clearly supported by the evidence on record.

Prosecutor:

Will you please state your name, age and other personal circumstances?

A I am Prudencio Serote, 29 years old, single farmer and a resident of Lequep (sic), San Fabian, Pangasinan.

Q On July 23, 1995 in the morning, do you remember where you were?

A Yes, sir, I was along the road.

Q Where is that road located?

A Lequep (sic), San Fabian, Pangasinan, sir.

Q While you were there, was there any unusual incident that you have observed?

A Yes, sir.

Q Please narrate to this Honorable Court this incident that you have seen?

A I saw Abelardo Velasquez being held by Diong Docusin and Gary Clauna, sir.

Q What part of the body of Abelardo Velasquez which was being held by the two?

A The two hands of Abelardo Velasquez, sir.

Q What happened next, after the two hands of Abelardo Velasquez were being held by Gary Clauna and Diong Docusin?

A Gary Clauna told Reynaldo Langit: "Apuram pare" (hurry up, pare).

Q What happened, after that?

A Reynaldo Langit shot Abelardo Velasquez, sir.

Q Now, you made mention of Reynaldo Langit. Can you still recognize this fellow who shot Abelardo Velasquez?

A Yes, sir.

Q Now, will you please look around the premises of this court and point to him if you know?

A (Witness pointing to the accused inside the courtroom when asked his name, answered Rey Langit)

Q Is this the very person now who shot Velasquez?

A Yes, sir.

Q How long have you known him?

A I have know (sic) him already for a long time, sir.

Q From where is he?

A From Lequep (sic), San Fabian, Pangasinan, sir.

Q By the way, what is your means of livelihood (sic)?

A Farmer and tricycle (sic) driver, sir.

Q What happened to Velasquez when he was shot by the accused, if you know?

A He died, sir.[55]

However, we do not agree with the trial court's conclusion that treachery attended the commission of the offense. Treachery is present 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 take.[56] To appreciate treachery, two conditions must be present, to wit: (1) the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.[57] In the present case, treachery was not adequately established by the prosecution since, as testified upon by Prudencio Serote, Abelardo Velasquez was engaged in a tussle with Diong Docusin and Patricio Clauna prior to the shooting. The existence of a struggle before the delivery of the fatal shot negates the attendance of treachery in the commission of the offense since this shows that the victim was forewarned of the impending attack and afforded the opportunity to put up a defense.[58] Moreover, the prosecution did not present any evidence to prove that accused-appellant deliberately adopted the manner by which Abelardo Velasquez was killed.

Likewise, we do not agree with the trial court's finding of the existence of abuse of superior strength. There is abuse of superior strength when there is a notorious inequality of forces between the victim and the aggressor.[59] Like treachery, this qualifying circumstance can only be appreciated if it is clearly shown that there was a deliberate intent on the part of the aggressor to take advantage thereof.[60]

We now come to accused-appellant's first assignment of error. Accused-appellant claims that the slug recovered from the brain of Abelardo Velasquez should not have been admitted in evidence as it had been improperly handled while in police custody. He claims that after Dr. Ramos extracted the slug from the brain tissue of the victim, she should have etched her initials on the side of the slug and surrendered the same to police custody for proper safekeeping. In this regard, accused-appellant quotes from a book entitled "Modern Police Service Encyclopedia," to wit:

"Firearms, shells, or BULLETS found at the crime scene should be marked for identification by the person finding such evidence. Shells should be marked for identification by scratching the officer's initial on the side; BULLETS SHOULD BE MARKED BY SCRATCHING THE INITIAL ON THE BASE." (p. 21, penultimate sentence, Modern Police Service Encyclopedia; bold letterings, capitalization, and underscoring supplied).[61]

Thus, accused-appellant submits that since the proper procedure was not observed in the handling of the slug, the "probative value of this evidence is now suspect as coming from a polluted source worthless of consideration of this Honorable Court." [62]

The Court agrees with accused-appellant that criminal investigators should be very cautious in handling pieces of evidence recovered from the crime scene or from the body of the victim in order that their sanctity as admissible evidence can be preserved.

Be that as it may, the way the police handled the slug was not really material in convicting accused-appellant for illegal possession of firearm since it does not form part of the corpus delicti of the crime. The fact that the firearm existed and that accused-appellant used the same in shooting Abelardo Velasquez was clearly established through the testimony of Prudencio Serote. Concerning accused-appellant's lack of authority to possess such firearm, this was proven through the testimony of SPO3 Romeo de Guzman as corroborated by the certification issued by the Firearms and Explosives Department of the Philippine National Police.

However, accused-appellant's conviction for illegal possession of firearm must be modified due to the

amendment of P.D. No. 1866 by Republic Act No. 8294,[63] under which the use of an unlicensed firearm in the commission of homicide or murder is no longer punishable as a separate offense, but treated merely as an aggravating circumstance.[64]

Under P.D. No. 1866, the use of an unlicensed firearm in the commission of homicide or murder was punishable with death and was treated as a separate offense from the aforesaid crimes against persons.

SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.--The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed.

If the violation of this Section is in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion, the penalty of death shall be imposed.

The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall wilfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs.

The penalty of prision mayor shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor.[65]

However, when the 1987 Constitution took effect, the penalty of death was reduced to reclusion perpetua. Sec. 19(1) of Article III provides:

Section 19(1).--Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless for compelling reasons involving heinous crimes, the Congress hereafter provides it. Any death penalty already imposed shall be reduced to reclusion perpetua.

Thereafter, on 6 June 1997, Republic Act No. 8294 took effect and further amended Sec. 1 of P.D No. 1866, to wit:

SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or ammunition.--The penalty of prision correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

The penalty of prision mayor in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, 41, 44, 45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

If the homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed

firearm shall be considered as an aggravating circumstance.

If the violation of this Section is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted coup d'etat, such violation shall be absorbed as an element of the crime of rebellion, or insurrection, sedition, or attempted coup d'etat.

The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer or any public or private firm, company, or corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs or willfully or knowingly allow any of them to use unlicensed firearms or firearms without any legal authority to be carried outside of their residence in the course of their employment.

The penalty of *arresto mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefore.[66]

The effect of this amendment in the law was discussed in the case of *People vs. Castillo*,[67] to wit:

P.D. 1866, which codified the laws on illegal possession of firearms, was amended on June 6, 1997 by Republic Act 8294. Aside from lowering the penalty for said crime, R.A. 8294 also provided that if homicide or murder is committed with the use of an unlicensed firearm, such use shall be considered as a special aggravating circumstance. This amendment has two (2) implications: first, the use of an unlicensed firearm in the commission of homicide or murder shall not be treated as a separate offense, but merely as a special aggravating circumstance; second, as only a single crime (homicide or murder with the aggravating circumstance of illegal possession of firearm) is committed under the law, only one penalty shall be imposed on the accused.

Since it is a basic principle in criminal jurisprudence that penal laws shall be given retroactive effect when favorable to the accused, we are now mandated to apply the new law in determining the proper penalty to be imposed on accused-appellant. Thus, in the present case, accused-appellant's conviction for the crime of aggravated illegal possession of firearm must be modified and the use of the unlicensed firearm in the killing of the victim shall be considered as a special aggravating circumstance.

The qualifying circumstances of treachery and abuse of superior strength having been ruled out in the commission of the felony, the crime for which accused-appellant should be made accountable must be modified from murder to homicide. Accordingly, the penalty of accused-appellant must correspondingly be lowered to *reclusion temporal*. There being one aggravating circumstance of using an unlicensed firearm in the commission of homicide, the proper imposable penalty should be *reclusion temporal* in its maximum period. Applying the Indeterminate Sentence Law, the minimum term is anywhere within the range of *prision mayor*, or from 6 years and 1 day to twelve years, and the maximum within the range of *reclusion temporal* in its maximum period, or from 17 years, 4 months and 1 day to 20 years.

We shall now discuss the civil aspect of the instant case. The monetary liabilities of a person accused and convicted of a crime are specified in Article 2206 of the Civil Code:

Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouses, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

Thus, aside from the ordinary indemnity for death which is currently set by case law at P50,000.00,[68] accused-appellant is obliged: (1) to compensate the heirs of Abelardo Velasquez for the latter's loss of earning capacity; and (2) to pay the heirs of Abelardo Velasquez moral damages for the mental anguish suffered by them. The variables that should be taken into account in determining the compensable amount of lost earnings are: (1) the number of years for which the victim would otherwise have lived; and (2) the rate of loss sustained by the heirs of the deceased. Jurisprudence provides that the first factor, i.e., life expectancy, is computed by applying the formula $(2/3 \times [80 - \text{age at death}])$ adopted in the American Expectancy Table of Mortality or the Actuarial Combined Experience Table of Mortality.[69] On the other hand, the second factor is arrived at by multiplying the life expectancy (31.33 years) by the net earnings of the deceased, i.e., the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses.[70] The net earning is ordinarily computed at fifty percent (50%) of the gross earnings.[71]

Thus, considering that Gemma Velasquez, the wife of the victim, testified that her 33-year old husband earned P150 a day in working as a carpenter, a fact which was not refuted by accused-appellant, the following is the computation of the expected loss of her deceased husband's earning capacity:

$$2/3 \times [80 - 33 (\text{age at time of death})] = 31.33 (\text{expected years of life left})$$

$$P150 (\text{daily wage}) \times 261 (\text{number of working days in a year}) = P39,150.00 (\text{gross annual salary})$$

$$P39,150 \times .50 = P19,575.00 (\text{net annual salary})$$

$$31.33 \times P19,575 = P613,284.75 (\text{loss of earning capacity})$$

Since the commission of the offense was attended by an aggravating circumstance, an award of exemplary damages in the amount of P50,000.00 is proper. Moreover, due to our award of exemplary damages, it is appropriate to also award attorney's fees in the amount of P50,000.00.[72]

Finally, Gemma Velasquez testified that she incurred P16,130.00 for the burial expense of her husband. This testimony was supported by documentary evidence and was not rebutted by the defense. Thus, the said amount should be awarded to the heirs of Abelardo Velasquez.

WHEREFORE, in view of the foregoing, the Decisions in CR-95-01109-D and CR-95-01115-D are hereby MODIFIED and accused-appellant is found GUILTY beyond reasonable doubt of the crime of homicide aggravated by the use of an unlicensed firearm and sentenced to suffer an indeterminate sentence of twelve years of prision mayor maximum as minimum and 18 years of reclusion temporal maximum as maximum. Accused-appellant is ordered to pay the heirs of the victim P50,000.00 as civil indemnity, P613,284.75 for unearned income, P37,325.00 for burial expenses, P50,000.00 as moral damages, P50,000.00 as exemplary damages and P50,000.00 as attorney's fees.

SO ORDERED.

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

[1] Presidential Decree No. 1866, entitled "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, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes."

[2] Records of CR-95-01109-D, p. 8.

[3] Records of CR-95-01115-D, p. 1.

[4] Id., at 153.

[5] Id., at 214.

[6] TSN, dated 22 May 1997, p. 6.

[7] Id., at 3.

[8] Id., at 4.

[9] TSN, dated 24 September 1997, pp. 3-4.

[10] TSN, dated 22 May 1997, p. 4.

[11] Ibid.

[12] Id.

[13] Id.

[14] TSN, dated 2 September 1997, p. 3.

[15] Id., at 4.

[16] Id., at 4-5.

[17] Id., at 5-6.

[18] Id., at 6.

[19] TSN, dated 16 September 1997, pp. 5-6.

[20] Id., at 7-8.

[21] Id., at 10.

[22] TSN dated 23 October 1997, p. 3.

[23] Id., at 7.

[24] Id.

[25] TSN, dated 23 October 1997, p. 9.

[26] Records of CR-95-01115-D, p. 251.

[27] Exhibit “3.”

[28] TSN, dated 9 December 1997, pp. 4-5.

[29] Id., at 5-6.

[30] Id., at 6-7.

[31] Id., at 9.

[32] Id., at 11.

[33] Id., at 12.

[34] Id., at 14-15.

[35] Id., at 20.

[36] Id., at 18.

[37] Id., at 21.

[38] Id.

[39] TSN, dated 25 November 1997, p. 4.

[40] Ibid.

[41] Exhibit “2.”

[42] TSN, dated 25 November 1997, p. 5.

[43] TSN, dated 31 July 1997, p. 4.

[44] Ibid.

[45] Id., at 5.

[46] Id.

[47] Id.

[48] TSN, dated 31 July 1997, p. 6.

[49] Records of CR-95-01115-D, p. 325.

[50] Rollo, pp. 64-65.

[51] Records of CR-95-01115-D, p. 151.

[52] Rollo, pp. 97-98.

[53] Ibid.

[54] Id., at 100-101.

[55] TSN, May 22, 1997, pp. 3-4.

[56] People vs. Torrefiel, 256 SCRA 369, 378-379 (1996); People vs. Patrolla, Jr., 254 SCRA 467 (1996); People

vs. Parangan, 231 SCRA 682, 691 (1994).

[57] People vs. Porras, 255 SCRA 514, 529 (1996); People vs. Ledesma, 250 SCRA 166, 172 (1995); People vs. Daquipil, 240 SCRA 314, 332 (1995).

[58] People vs. Rillorta, 180 SCRA 102, 107 (1989); People vs. Fernandez, 111 SCRA 100, 113, 114 (1982).

[59] People vs. Acuña, 248 SCRA 668, 677 (1995).

[60] People vs. Escoto, 244 SCRA 87, 97-98 (1995).

[61] Rollo, p. 67.

[62] Id., at 68.

[63] Entitled "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, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes.

[64] People vs. Molina, 292 SCRA 742, 781-782 (1998); People vs. Feloteo, 290 SCRA 629, 633-636 (1998); People vs. Bregante, 286 SCRA 629, 644 (1998).

[65] Emphasis supplied.

[66] Emphasis supplied.

[67] G.R. No. 131592-93, Feb. 15, 2000.

[68] People vs. Lopez, GR No. 119380, 19 August 1999.

[69] People vs. Villanueva, 302 SCRA 380, 410-402 (1999); People vs. Suitos, 20 SCRA 419, 431 (1967); People vs. Daniel, 136 SCRA 92, 104 (1985).

[70] People vs. Reyes, 309 SCRA 622 (1999).

[71] People vs. De Vera, Sr., 308 SCRA 75, 102 (1999).

[72] Article 2208 (1), Civil Code.

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