

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EUFROCINO AGUDEZ Y ASIONG @ “OPRING”, RONILO AGUDEZ Y COCOY @ “DANILO”, RICARDO AGUDEZ Y COCOY @ “OLONG”, FERNANDO AGUDEZ Y COCOY (AT LA...

G.R. Nos. 138386-87. May 20, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us for automatic review is the consolidated decision[2] of the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 2, in Criminal Cases Nos. 5176 and 5177 convicting appellant Eufrocino Agudez and his two sons, appellants Ronilo Agudez and Ricardo Agudez of two counts of murder and sentencing each of them to suffer the supreme penalty of death for each count.

Appellants were apprehended by police authorities on June 27, 1998. They were charged with murder in two separate Informations both dated June 29, 1998 together with Fernando Agudez and Paquito Katimpo, son and son-in-law of appellant Eufrocino, respectively.

The accusatory portions of the amended Informations, docketed as Criminal Cases Nos. 5176 and 5177, read as follows:

Criminal Case No. 5176

The undersigned Third Assistant Provincial Prosecutor of Aklan hereby accuses EUFRICINO AGUDEZ Y ASIONG alias “OPRING”, RONILO AGUDEZ Y COCOY alias “DANILO”, RICARDO AGUDEZ Y COCOY alias “OLONG”, all of Sitio Binitinan, Barangay Oquendo, Balete, Aklan, but presently detained at the Municipal Jail of Balete, Aklan, FERNANDO AGUDEZ Y COCOY and PAQUITO KATIMPO Y INGGO alias “KITOY” both of Sitio Binitinan, Barangay Oquendo, Balete, Aklan and both at large, of the crime of MURDER, committed as follows:

That on or about the 27th day of June, 1998, in the morning, in Sitio Panukduka, Barangay Oquendo, Municipality of Balete, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, while armed with long shotguns, with intent to kill, with evident premeditation, treachery and use of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot one DOMINADOR CASTRO, thereby inflicting upon the latter mortal wounds, to wit:

- GSW 1 cm. in diameter coursing downward and anteriorly at the occipital region.
- GSW 1 cm. in diameter at the anterior aspect of the left wrist.
- GSW 1 cm. in diameter at the left scapular region.
- GSW 1 cm. in diameter coursing downward and anteriorly at the interscapular area.

- GSW 1 cm. in diameter just below the right scapular region.
- GSW 1 cm. in diameter right lower back.
- GSW 1 cm. in diameter 2 cm. lateral to injury #6.
- GSW 1 cm. in diameter coursing downward and anteriorly right buttock.
- GSW 1 cm. in diameter posterior aspect of the distal 3rd of the right thigh.

as per Post Mortem Examination Report issued by Dr. Alfredo B. Villaruel, Rural Health Physician, Balete, Aklan, hereto attached and made an integral part of this information, which wounds directly caused the death of the said DOMINADOR CASTRO.

That as a result of the criminal acts of the accused, the heirs of the deceased suffered actual and compensatory damages in the amount of P50,000.00.

CONTRARY TO LAW.[3]

Criminal Case No. 5177

The undersigned Third Assistant Provincial Prosecutor of Aklan hereby accuses EUFRICINO AGUDEZ Y ASIONG alias "OPRING", RONILO AGUDEZ Y COCOY alias "DANILO", RICARDO AGUDEZ Y COCOY alias "OLONG", all of Sitio Binitinan, Barangay Oquendo, Balete, Aklan, but presently detained at the Municipal Jail of Balete, Aklan, FERNANDO AGUDEZ Y COCOY and PAQUITO KATIMPO Y INGGO alias "KITOY" both of Sitio Binitinan, Barangay Oquendo, Balete, Aklan and both at large, of the crime of MURDER, committed as follows:

That on or about the 27th day of June, 1998, in the morning, in Sitio Panukduka, Barangay Oquendo, Municipality of Balete, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, while armed with long shotguns, with intent to kill, with evident premeditation, treachery and use of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot one MAMERTO C. NALANGAN, thereby inflicting upon the latter mortal wounds, to wit:

- GSW 1 cm. in diameter just above the right scapular region.
- GSW 1 cm. in diameter 2 cm lateral to injury #1.
- GSW 1 cm. in diameter posterior aspect of the proximal 3rd of the right arm coursing downward and medially.
- GSW 1 cm. in diameter at the interscapular area.
- GSW 1 cm. in diameter coursing downward and anteriorly at the infrascapular area.
- GSW 1 cm. in diameter at the level of midspinal line and 7th rib.
- GSW 1 cm. in diameter at the right lower back.
- GSW 1 cm. in diameter coursing downward and anteriorly at the middle 3rd of left thigh.
- GSW 1 cm. in diameter at the distal 3rd of left thigh.
- GSW 1 cm. in diameter at posterior aspect of the proximal 3rd of left leg.

as per Post Mortem Examination Report issued by Dr. Alfredo B. Villaruel, Rural Health Physician, Balete, Aklan, hereto attached and made an integral part of this information, which wounds directly caused the death

of the said MAMERTO NALANGAN.

That as a result of the criminal acts of the accused, the heirs of the deceased suffered actual and compensatory damages in the amount of P50,000.00.

CONTRARY TO LAW.[4]

Upon arraignment, appellants Eufrocino, Ronilo and Ricardo pleaded not guilty to the charges against them. The cases were consolidated and joint trial ensued.

Accused Fernando and Katimpo remain at large.

The prosecution evidence established the following facts:

On the basis of the prosecution evidence, the following transpired on June 27, 1998: About 5:00 in the morning, Adoracion Castro, together with her husband Dominador Castro and their nephew Mamerto Nalangan, left their house at Barangay Oquendo, Balete, Aklan. Travelling by foot, they headed for Barangay Ganzon, Jamindan, Capiz to hear mass at the Seventh Day Adventist Church. Around 6:30, they reached Jal-O river which was located at Sitio Panukduka, Barangay Oquendo, Balete, Aklan. As they were crossing the river, one after the other, Adoracion suddenly heard a gunshot. She immediately turned around as she was walking ahead of Dominador and Mamerto. She then saw Dominador looking at her, biting his lips. She shouted at Dominador and told him to “duck to the ground”. Immediately thereafter, she heard two shots and saw Dominador and Mamerto fall into the water. She went to the aid of Dominador and held him in her arms. While holding her husband, Adoracion looked up and saw the five accused with their bodies, from the waist up, protruding from fox holes dug in the ground. They were about ten armlength away from Adoracion and Dominador and they were all armed with shotguns locally known as “pugakhang”. They immediately ran and scampered to different directions. Adoracion then told Dominador that she would go back home to ask for help. However, before leaving her husband and nephew Mamerto, she noticed that both of them were no longer breathing. She immediately informed her sons, Edwin and Efren, of the deaths of Dominador and Mamerto. [5] At 11:30 in the morning, Efren and a certain Barangay Captain Dandoy reported the shooting incident to the police authorities in Balete, Aklan. The chief of police of Balete then formed a team which proceeded to the crime scene and conducted an investigation.[6] After finishing their investigation, the police authorities retrieved the bodies of Dominador and Mamerto and brought them to Sitio Gubang, Barangay Guadalupe where the bodies were examined.[7] It was around 6:00 in the evening that Adoracion again saw the body of her husband at Sitio Gubang. There she was asked to identify a person who was earlier apprehended by the police. Adoracion identified appellant Ricardo Agudez as one of the persons who shot her husband and nephew.[8] Around 7:00, appellants Eufrocino and Ronilo were also apprehended by police authorities.[9] The following morning, Adoracion identified them as among those who killed her husband and nephew.[10]

Adoracion further testified that the five accused shot at her husband and nephew because they were in the belief that it was her son who had earlier killed a son of appellant Eufrocino.[11]

Appellants’ main defense is alibi. They, together with two other witnesses, Jenie Zaulda and Nelson Cerezo, took the witness stand to prove their defense. The gist of their testimonies taken together is as follows:

Around 6:30 in the morning of June 27, 1998, Jenie went to the house of barangay kagawad Nelson Cerezo located at Barangay Julita, Libacao, Aklan. Upon arriving at Nelson’s house, he saw appellants Eufrocino and Ricardo getting ready for work. Jenie is acquainted with them as he has seen them stay in the house of Nelson starting in the month of June 1998. Jenie found out that Nelson was not at home because he is attending the wake of a certain Iluminado Sagales. Since Jenie wanted to talk to Nelson, he decided to go to the wake. Appellants

Ricardo and Eufrocino went out of the house with him.[12] Jenie proceeded to the wake but Eufrocino and Ricardo went to Sitio Gaob, Barangay Julita, Libacao, Aklan to construct a pigpen at the house of a certain Romeo Zamora.[13] Upon arriving at the wake, Jenie saw Nelson and appellant Ronilo playing “tong-its”, a card game. After briefly conversing with Nelson, Jenie went home.[14] On the other hand, appellants Ricardo and Eufrocino arrived at the house of Zamora at 8:00 of the same morning and worked there until 3:00 in the afternoon of the same day. After they finished constructing the pigpen, they went home. They arrived at the house of Nelson at 4:30 of the same afternoon.[15] Meanwhile, Nelson and appellant Ronilo arrived home earlier at 2:00 in the afternoon, having stayed at the wake since 9:00 in the evening of the previous day, January 26, 1998.[16] It was in Nelson’s house that police authorities apprehended appellant Ricardo in the afternoon of June 27, 1998.[17] Later in the evening of the same day, appellants Eufrocino and Ronilo were also arrested by policemen at the house of Nelson. [18]

On January 14, 1999, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court finds the accused Eufrocino Agudez y Asiong, Ronilo Agudez y Cocoy and Ricardo Agudez y Cocoy, GUILTY beyond reasonable doubt of two (2) counts of MURDER under Article 248 of the Revised Penal Code, as amended by R.A. 7659, and hereby imposes upon each of them the penalty of DEATH for each count, and further ORDERS them to jointly and severally pay

1) To the legal heirs of the victim Dominador Castro:

- a) The amount of P50,000.00 for the victim’s death; and
- b) The amount of P159,960 for the victim’s loss of earning capacity.

2) To the legal heirs of the victim Mamerto C. Nalangan:

- a) The sum of P50,000.00 only for the victim’s death.

And lastly, for the time being, let these cases before this Court against the accused Fernando C. Agudez and Paquito I. Katimpo who, as of this moment, are still at large, be sent to the Archives, to be reopened only upon their apprehension by the authorities.

With costs.

SO ORDERED.[19]

Hence, herein automatic review pursuant to Article 47 of the Revised Penal Code, as amended.

Appellants raise the following Assignment of Errors:

I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II

THE TRIAL COURT ERRED IN APPRECIATING TREACHERY AND EVIDENT PREMEDITATION AGAINST THE ACCUSED

III

THE TRIAL COURT ERRED IN APPRECIATING BAND AND UNINHABITED PLACE AGAINST THE ACCUSED.”[20]

On the Credibility of Prosecution Eye-witness

In their first assigned error, appellants assail the credibility of prosecution witness Adoracion Castro who is the

lone eyewitness to the crime. They claim that Adoracion could not have clearly seen the perpetrators of the crime because of the presence of foliage around the holes where the assailants hid. However, SPO2 Jerry Custodio testified that from the vantage point where the holes were located, the cadavers of the victims could still be seen despite the presence of plants in the adjoining area.[21] Hence, while it may be true that Adoracion did not have a clear line of vision because of the foliage surrounding the holes where appellants and their companions hid, it is not improbable for her to have seen and identified appellants as three of the five assailants of her husband and nephew, when they emerged from the holes and scampered to different directions. Moreover, Adoracion could have easily identified appellants as she was only about ten armlength away from the place where she saw them and considering that all five accused were known to her since January 1998.[22]

Appellants insinuate that Adoracion was ill-motivated in accusing them of killing her husband and nephew. They claim that Adoracion simply wanted appellants thrown into jail to avenge the death of her husband. However, we find appellants' allegations unsubstantiated. The fact that Adoracion is related to the victims does not necessarily taint her testimony. Blood relationship between a witness and the victims does not, by itself, impair the witness' credibility.[23] As the widow and aunt of the victims Dominador and Mamerto, respectively, Adoracion is the most aggrieved party and her motive of putting the killers behind bars cannot be considered improper.[24] We have held that it is unnatural for an aggrieved relative who earnestly seeks justice to falsely accuse someone other than the actual culprit. Moreover, since there is no competent evidence to prove that improper motive moved Adoracion to testify falsely, the sound conclusion is that no such motive existed[25] and her testimony is worthy of full faith and credit.[26]

The truthfulness of Adoracion's testimony is also bolstered by the fact that evidence found in the crime scene, consisting of spent shells of shotguns, the number of wounds sustained by the victims and the pellet recovered from the left wrist of Dominador Castro during the autopsy[27] is consistent with her statement as to the kind of weapons used by appellants and their companions.

The trial court lent credence to the testimony of Adoracion. Basic is the rule that this Court will not interfere with the trial court's assessment of the credibility of witnesses except when there appears on record some fact or circumstance of weight and influence which the trial court has overlooked, misapprehended or misinterpreted.[28] The reason for this rule is that the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[29] In *People vs. Magallanes*[30], we held that:

The trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply, or the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.

In the present case, we find no compelling reason to depart from the trial court's observation that Adoracion Castro testified in a straightforward, sincere and natural manner and that her emotional reactions in particular, were candid and spontaneous – revealing inter alia – that she was telling the truth.[31] The testimony of a single witness, if positive and credible, is sufficient to support a conviction.[32] The trial court did not err in finding appellants guilty of Murder beyond reasonable doubt.

On Conspiracy

We agree with the trial court's finding of conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. [33] In *People vs. Caballero*, we held

that:

Conspiracy must be proved with the same quantum of evidence as the crime itself, that is, by proof beyond reasonable doubt. However, direct proof is not required as conspiracy may be proved by circumstantial evidence. Conspiracy may be proved through the collective acts of the accused, before, during and after the commission of a felony, all the accused aiming at the same object, one performing one part and another performing another for the attainment of the same objective, their acts though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments. The overt act or acts of the accused may consist of active participation in the actual commission of the crime itself or may consist of moral assistance to his co-conspirators by moving them to execute or implement the criminal plan. Direct proof of a person in agreement to commit a crime is not necessary. It is enough that at the time of the commission of a crime, all the malefactors had the same purpose and were united in their execution. Once established, all the conspirators are criminally liable as co-principals regardless of the degree of participation of each of them for in contemplation of the law, the act of one is the act of all.[34] (Emphasis supplied).

In the present case, the following circumstances prove the existence of conspiracy among the appellant and the other two accused: (1) the presence of all the accused at the same time in an isolated area where the killing took place; (2) the existence of five holes from each of which each of the five accused emerged; (3) all five of the accused were armed with shotguns or “pugakhang”; (4) after the victims fell when fired upon by all of them, all the accused simultaneously came out of hiding and scampered to the thickets. In conspiracy, “where conspiracy is directly established, with proof of the attendant deliberation and selection of the method, time and means of executing the crime, the existence of evident premeditation can be appreciated”.[35]

The second and third assigned errors refer to the appreciation by the trial court of the aggravating circumstances of treachery, evident premeditation, band and uninhabited place.

On Treachery

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[36] Hence, for treachery to be appreciated, two conditions must be met, to wit: (1) the employment of means, methods or manner of execution that would ensure the offender’s safety from any defense or retaliatory act on the part of the offended party; and (2) the offender’s deliberate or conscious choice of the means, method or manner of execution.[37]

Adoracion did not actually see how the shooting started or how the attack was commenced. However, she testified that she was only about five armlength away from her husband and nephew when she heard the first gunshot. No amount of warning could have prepared the victims against the impending danger that befell upon them. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner of execution, affording the hapless and unsuspecting victim no chance to resist or escape. [38] When they were assaulted, the victims were peacefully crossing the Jal-O river without any inkling that they were about to be attacked. Appellants and their companions purposively established themselves in strategic positions from which vantage point they fired upon the victims, taking them by surprise. The fact that the victims’ backs were turned towards their assailants at the time they were fired upon only proves the treacherousness of the attack. The victims were not even given the chance to face their attackers as they were felled by successive bursts of gunshots. Moreover, at the time of the shooting, the victims were then crossing the river and the water was about thigh deep.[39] This circumstance must have considerably decreased the victims’ mobility giving them less opportunity to seek cover and at the same time ensured the safety of appellants and their cohorts from any retaliatory act that the victims might have made. Except for their bags and the hoe Dominador was carrying, the victims were

unarmed and had nothing to defend themselves with against the firearms used by their assailants. Even granting that Dominador and Mamerto saw their attackers immediately before they were fired upon, such circumstance would not render the attack less treacherous as it was executed with such swift, vicious and stealthy manner as to render any defense like the use of the hoe virtually impossible.

Furthermore, the deadly nature of the weapons used and the number and location of the wounds inflicted upon the victims demonstrate a treacherous, deliberate and determined assault with intent to kill. As earlier mentioned, Dominador Castro sustained nine wounds. [40] Except for a single wound on his left wrist, all of his wounds were located at his back.[41] In the same manner, Mamerto Nalangan sustained ten wounds, all of which were located at his back.[42] The victims were shot from behind. We have held that treachery exists when a defenseless victim was shot from behind for this shows that the appellant had employed means of attack which offered no risk to himself from any defensive or retaliatory act which the victim might have taken.[43]

On Evident Premeditation

Evident premeditation requires proof showing: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[44]

In the present case, we find no clear and positive evidence to prove the first and third requisites. While there are pieces of evidence on the basis of which it can be inferred that appellants and their companions made preparations in shooting the victims, no proof was shown as to how and when the plan to kill was hatched or the time that elapsed before it was carried out. As we held in *People vs. Jarlos*,[45] evident premeditation may not be appreciated where there is no proof as to how and when the plan to kill was hatched or the time that elapsed before it was carried out.

Since there is no evidence of the time when appellants conceived the plot to kill the victims, it could not be ascertained whether there is sufficient lapse of time between the determination to kill and the execution of the crime so as to allow them to reflect upon the consequences of the concerted act.

On Abuse of Superior Strength

Since treachery attended the killing, abuse of superior strength alleged in the Information is absorbed by said circumstance.[46]

Although it may be noted that the two Informations charging appellants with separate crimes of murder failed to specifically allege treachery, evident premeditation and abuse of superior strength as qualifying circumstances, the established rule is that . . .

[I]t is the specific allegation of the attendant circumstance, and not the use of the words aggravating or qualifying circumstances, that raises a crime to a higher category. Thus, the words qualifying, qualified by, aggravating, or aggravated by need not be expressly stated as long as the particular attendant circumstances are specified in the information. We reiterate our pronouncements in said case that Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure merely require that the information allege, specify, or enumerate the attendant circumstances mentioned in the law that qualify or aggravate the offense.[47]

Hence, in the present case, while the two Informations charging appellants with separate crimes of murder did not use the words “aggravated by” or “qualified by”, the presence of treachery, evident premeditation and abuse of superior strength in the killing of Dominador and Mamerto is alleged therein. Such specification, enumeration or allegation sufficiently satisfies the requirements of Sections 8 and 9, Rule 110 of the Revised Rules of Criminal Procedure, to wit:

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.

The qualifying circumstance of treachery having been alleged and proved by competent evidence, the trial court correctly found appellants guilty of Murder beyond reasonable doubt.

On Band and Uninhabited Place

We agree with appellants that the aggravating circumstances of band and uninhabited place although established by the prosecution evidence should not have been appreciated by the trial court because they were not alleged in the two Informations as required by the aforementioned Sections 8 and 9, Rule 110 of the Revised Rules of Criminal Procedure. It may be noted that the crime was committed in 1998, before the effectivity of the said Revised Rules on December 1, 2000. However, the Rules may be applied retroactively because they are more favorable to the appellants.[48]

Appellants' Defense

Appellants' defense of alibi cannot prosper. Basic is the rule that the defense of alibi should be rejected when the identity of the accused has been sufficiently and positively established by an eyewitness because alibi cannot prevail over positive identification.[49]

Criminal Liability of Appellants

Under Article 248 of the Revised Penal Code, the penalty for murder is reclusion perpetua to death. Article 63 of the same Code provides that when the law prescribes two indivisible penalties, the lesser penalty shall be imposed when, in the commission of the deed, there are neither mitigating nor aggravating circumstances. In the present case, no mitigating circumstances were proven. Neither did the prosecution allege and prove any aggravating circumstance. Hence, the penalty of death imposed by the trial court should be reduced to reclusion perpetua, in each case.

Civil Liability of Appellants

We find no error in the trial court's award of P50,000.00 as civil indemnity to the respective heirs of Dominador Castro and Mamerto Nalangan, without need of proof other than the fact that a crime was committed resulting in the deaths of the victims and that the accused are responsible therefor.[50]

The trial court awarded the heirs of Dominador Castro the amount of P159,960.00 by reason of the victim's loss of earning capacity. The general rule is that documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity.[51] By way of exception, damages may be awarded despite the absence of documentary evidence provided that there is testimony that the victim was either (1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available; or (2) employed as a daily wage worker earning less than the minimum wage under current labor laws.[52] In the present case, no documentary evidence was presented to prove the claim of Dominador's heirs for damages by reason of loss of earning capacity. However, Adoracion

testified that at the time of his death, Dominador was 60 years old[53]; his occupation was farming, carpentry and making of banana fiber; and, he earned not less than P1,000.00 a month.[54] We find Adoracion's testimony sufficient to justify the award of damages for loss of earning capacity.

Although appellants did not assail the amount awarded by the trial court, the same should be modified in accordance with current jurisprudence. In the case of *People vs. Carriaga*, [55] we provided for the formula in determining a person's net earning capacity as follows:

Net Earning Capacity = $\frac{2}{3} \times (80 -$

age of the
victim at the time
of his death)

$\times$

(a reasonable
portion of the
annual net
income which
would have
been received
by the heirs
for support)

Absent any proof of living expenses, the net income is deemed to be 50% of the gross income.[56] Hence, in accordance with the formula outlined above, the heirs of Dominador should be awarded the amount of P80,000.00, rounded off, for the victim's loss of earning capacity, computed as follows:

Net Earning Capacity

= $\frac{2}{3} \times (80 - 60) \times [P12,000.00 - \frac{1}{2} (P12,000.00)]$

= $\frac{2}{3} \times (20) \times P6,000.00$

= $13.33 \times P6,000.00$

= P79,999.99

The trial court correctly ruled that the heirs of Mamerto Nalangan are not entitled to be indemnified for loss of earning capacity because no evidence was presented to prove Mamerto's occupation as well as his income.

We likewise find no error in the trial court's ruling that actual or compensatory damages may not be awarded because the prosecution failed to present competent evidence to support their claim for actual damages. Instead of official receipts, the prosecution was only able to present a self-serving list of expenses to prove the actual expenses incurred by the heirs of Dominador and Mamerto. We have held that a list of expenses cannot replace receipts when the latter should have been issued as a matter of course in business transactions.[57] Neither can the mere testimonies of Adoracion Castro and Efren Castro on the amount they spent suffice. It is necessary for a party seeking an award for actual damages to produce competent proof or the best evidence obtainable to justify such award.[58]

Nonetheless, in lieu of actual damages, the heirs of Dominador and Mamerto may be awarded temperate damages

in the amount of P25,000.00, in accordance with prevailing jurisprudence, as it has been shown that the family of the victims incurred burial and funeral expenses, although the amount thereof cannot be proved with certainty.[59]

The trial court did not award moral damages.

With respect to Dominador, the prosecution presented Adoracion Castro, wife of the deceased victim who testified as to the pain and the suffering experienced by the heirs. [60] Hence, the heirs of Dominador Castro are entitled to moral damages in the amount of P50,000.00.

On the other hand, none of the heirs of Mamerto Nalangan was presented to testify on the emotional anguish they felt by reason of the latter's death. Moral damages cannot be awarded if no evidence, testimonial or otherwise, was presented by the prosecution to support it. [61] Hence, the heirs of Mamerto are not entitled to moral damages.

The heirs of the victims are entitled to exemplary damages. The presence of the aggravating circumstances of band and uninhabited place was proven in the present case as earlier discussed. While these circumstances could not aggravate the crime because they were not specifically alleged in the Informations in violation of Section 8, Rule 110 of the Revised Rules of Criminal Procedure, insofar as the civil aspect of the case is concerned, the presence of these aggravating circumstances entitles the heirs of Dominador and Mamerto to exemplary damages in the amount of P25,000.00 in accordance with Article 2230 of the Civil Code[62] and with prevailing jurisprudence.[63]

WHEREFORE, the Decision of the Regional Trial Court of Kalibo, Aklan, Branch 2, is **AFFIRMED** with **MODIFICATIONS**. Appellants Eufrocino Agudez y Asiong, Ronilo Agudez y Cocoy and Ricardo Agudez y Cocoy are found guilty beyond reasonable doubt of Murder in Criminal Cases Nos. 5176 and 5177 and are sentenced to suffer the penalty of reclusion perpetua for each crime. Appellants are directed to pay, jointly and severally, the heirs of Dominador Castro the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P80,000.00 for loss of earning capacity, P25,000.00 as temperate damages and P25,000.00 as exemplary damages; and to the heirs of Mamerto Nalangan the amounts of P50,000.00 as civil indemnity, P25,000.00 as temperate damages and P25,000.00 as exemplary damages.

Costs de officio.

SO ORDERED.

Vitug, (Acting Chief Justice), Panganiban, Quisumbing, Ynares-Santiago, Sandoval- Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Davide, Jr., C.J., and Puno, J., on official leave.

[1] Spelled as Eufrocino in the Informations and other portions of the Original Records.

[2] Penned by Judge Tomas R. Romaquin.

[3] Original Records of Criminal Case No. 5176, pp. 1-2.

[4] Original Records of Criminal Case No. 5177, pp. 1-2.

[5] TSN, Testimony of Adoracion Castro, November 12, 1998, pp. 13-16; TSN, November 13, 1998, pp. 4-19.

[6] TSN, Testimony of SPO4 Earl Legaspi, October 14, 1998, pp. 3-4;

- [7] TSN, Testimony of SPO2 Jerry Custodio, October 14, 1998, pp. 40-41
- [8] TSN, Testimony of Adoracion Castro, November 13, 1998, p. 18.
- [9] TSN, Testimony of SPO4 Earl Legaspi, October 14, 1998, p. 18.
- [10] TSN, Testimony of Adoracion Castro, November 13, 1998, p. 19.
- [11] TSN, November 13, 1998, p. 14.
- [12] TSN, Testimony of Jenie Zaulda, November 19, 1998, pp. 13-17.
- [13] TSN, Testimony of Ricardo Agudez, November 25, 1998, pp. 6-7.
- [14] TSN, Testimony of Jenie Zaulda, November 19, 1998, pp. 17-18.
- [15] TSN, Testimony of Ricardo Agudez, November 25, 1998, pp. 21-24.
- [16] TSN, Testimony of Nelson Cerezo, November 24, 1998, p. 14, 17; TSN, Testimony of Ronilo Agudez, November 25, 1998, pp. 6-7.
- [17] TSN, Testimony of Ricardo Agudez, November 25, 1998, p. 8.
- [18] TSN, Testimony of Eufrocino Agudez, December 3, 1998, pp. 14-15.
- [19] Original Records of Criminal Case No. 5176, pp. 129-130.
- [20] Rollo, p. 64.
- [21] TSN, October 14, 1998, pp. 34 and 40.
- [22] TSN, November 12, 1998, pp. 5-6.
- [23] *People vs. Ayupan*, 376 SCRA 704, 716 (2002).
- [24] *People vs. Navales*, 266 SCRA 569, 590 (1997)
- [25] *People vs. Visperas*, G.R. No. 147315, January 13, 2003.
- [26] *People vs. Cariño*, 363 SCRA 768, 775 (2001).
- [27] Exhibit "B", OR of Crim. Case No. 5176, p. 8; TSN, Testimony of Dr. Alfredo B. Villaruel, October 13, 1998, pp. 9-10.
- [28] *People vs. Eclera, Sr.*, G.R. No. 144402, August 14, 2003; *People vs. Dela Cruz*, G.R. No. 148730, June 26, 2003.
- [29] *People vs. Mala*, G.R. No. 152351, September 18, 2003.
- [30] G.R. No. 136299, August 29, 2003.
- [31] Rollo, p. 33.
- [32] *People vs. Sevala vs. Court of Appeals*, 353 SCRA 33, 42-43 (2001).
- [33] Article 8, Revised Penal Code.

[34] 400 SCRA 424, 437(2003).

[35] *People vs. Givera*, 349 SCRA 513, 533 (2001).

[36] Article 14 (16), Revised Penal Code.

[37] *People vs. Manansala*, G.R. No. 147149, July 9, 2003.

[38] *People vs. Sara*, G.R. No. 140618, December 10, 2003.

[39] TSN, Testimony of Adoracion Castro, November 17, 1998, p. 8.

[40] Exhibits “B”, OR of Crim. Case No. 5176, p. 8; Exhibit “B-3”, Folder of Exhibits.

[41] *Ibid.*

[42] Exhibit “D”, OR of Crim. Case No. 5176, p. 9; Exhibit “D-2”, Folder of Exhibits.

[43] *People vs. Ponsaran*, 376 SCRA 434, 451 (2002).

[44] *People vs. Sayaboc*, G.R. No. 147201, January 15, 2004.

[45] 397 SCRA 735, 743-744 (2003).

[46] *People vs. Carriaga*, G.R. No. 135029, September 12, 2003; *People vs. Baldogo*, 396 SCRA 31, 56 (2003).

[47] *People vs. Borja*, G.R. No. 143817, October 27, 2003, citing *People vs. Aquino*, 386 SCRA 391 (2003).

[48] *People vs. Caabay*, G.R. No. 129961-62, August 25, 2003.

[49] *People vs. Unlagada*, 389 SCRA 224, 229 (2002).

[50] *People vs. Magalona*, G.R. No. 143294, July 17, 2003.

[51] *People vs. Mallari*, G.R. No. 145993, June 17, 2003.

[52] *Ibid.*

[53] TSN, November 13, 1998, p. 22.

[54] *Id.*, p. 15.

[55] G.R. No. 135029, September 12, 2003.

[56] *Ibid.*

[57] *People vs. Baño*, G.R. No. 148710, January 15, 2004.

[58] *Ibid.*

[59] *Ibid*; *People vs. Villanueva*, G.R. No. 139177, August 11, 2003.

[60] TSN, Testimony of Adoracion Castro, November 13, 1998, pp. 15-16.

[61] *People vs. Villanueva*, G.R. No. 139177, August 11, 2003; *People vs. Gialolo*, G.R. No. 152135, October 23, 2003.

[62] Art. 2230. – In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from

finer and shall be paid to the offended party.

[63] *People vs. Carriaga*, G.R. No. 135029, September 12, 2003, citing *People vs. Delos Santos*, G.R. No. 134525, February 28, 2003.

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