

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAFAEL CALOZA, JR. ALIAS “JUNE CALOZA”, ACCUSED-APPELLANT.**

G.R. Nos. 138404-06. January 28, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us on automatic review is the Joint Decision of Branch 27 of the Regional Trial Court of Cabanatuan City convicting accused-appellant of three counts of murder and meting on him the supreme penalty of death for each count. He was also ordered to pay civil indemnity and actual damages to the heirs of the victims.

I. The Indictment

On April 20, 1998, accused-appellant Rafael Caloza, Jr. was charged before the Regional Trial Court of Cabanatuan City with three counts of murder in three separate Informations, to wit:

Criminal Case No. 8198 –

“That on or about the 6[th] day of July, 1997, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and taking advantage of nighttime and with the use of a hard pointed object (bareta de kabra) did then and there, willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one DIONISIO BULACLAC, by hitting him with the use of a bareta de kabra, thereby resulting to the instantaneous death of said DIONISIO BULACLAC to the damage and prejudice of his heirs.

CONTRARY TO LAW.”[1]

Criminal Case No. 8199 –

“That on or about the 6[th] day of July, 1997, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and taking advantage of nighttime and with the use of a hard pointed object (bareta de kabra) did then and there, willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one EDNA BULACLAC, by hitting her with the use of a bareta de kabra, thereby resulting to the instantaneous death of said EDNA BULACLAC to the damage and prejudice of her heirs.

CONTRARY TO LAW.”[2]

Criminal Case No. 8200 –

“That on or about the 6[th] day of July, 1997, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and taking advantage of nighttime and with the use of a hard pointed object (bareta de kabra) did then and there, willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one MARK JOSEPH BULACLAC, by hitting him with the use of a bareta de kabra, thereby resulting to the instantaneous death of said MARK JOSEPH BULACLAC to the damage and prejudice of his heirs.

CONTRARY TO LAW.”[3]

Upon his arraignment on May 19, 1998,[4] Rafael, assisted by counsel, entered a plea of “not guilty” to all the charges. Thereafter, upon agreement of the parties, a joint trial of the case ensued.

The prosecution presented Gilbert Embuscado, Allan Bulaclac and Felipa Hernal Bulaclac as witnesses.

II. Antecedent Facts

Dionisio Bulaclac was a tenant of a farm lot located in Bakod Bayan, Cabanatuan City. He and his 16-year-old wife, Edna, and their infant son, Mark Joseph Anthony, lived in a hut situated near the farmstead Dionisio was tilling.[5] Allan Bulaclac, the younger brother of Dionisio, used to frequent the latter’s place whenever Dionisio requested help to farm the field.[6]

On July 5, 1997, Dionisio asked Allan to come to his farm the following day to help him till the land. Allan agreed. At about 5:00 a.m. on July 6, 1997, Allan left their place in Liway, Sta. Rosa, Nueva Ecija and proceeded to Dionisio’s farm. Allan had a “lente” placed on his forehead to illumine his path as it was still dark. When Allan was about a hundred meters away from Dionisio’s hut, he noticed Rafael at a distance of ten meters coming from the direction of the hut of Dionisio.[7] Rafael was no stranger to Allan because the latter used to help Dionisio till the field.[8] Allan readily recognized Rafael from the illumination coming from the “lente” on his forehead. Allan noticed bloodstains on the clothes of Rafael. Allan was perplexed when Rafael tried to evade him as they met.[9] Allan then entered Dionisio’s hut which at that time was lighted by a kerosene lamp called “kingke.” Allan called but nobody answered. He peeped through the window and was horrified to see his brother’s feet as well as blood under the bed. Allan immediately rushed home and reported the incident to his parents. Allan and his parents proceeded posthaste to Dionisio’s hut. They saw several persons near the hut of Dionisio including some policemen who prevented Allan and his parents from entering the hut. It turned out that Dionisio, his wife Edna and their young son Mark Joseph Anthony were already dead.[10]

On July 7, 1997, Dr. Gilbert V. Embuscado, Acting City Health Officer of Cabanatuan City, conducted an autopsy examination of the cadavers of the victims and made the following post-mortem findings:

Dionisio Bulaclac

“x x x The victim is approximately 1.75 M in height and fairly built. The following findings were seen.

-

Gaping wound approximately 2.5 cms x 3 cms frontal area with comminuted fracture of frontal and nasal bones.

-

Incised wound approximately 0.5 cm. left eyelid

-

Incised wound approximately 0.5 cm nasal area

-

Lacerated wound approximately 0.5 cm left side face

-

Abrasion left side of face

-

Contusion hematoma left periorbital region.

-

Incised wound approximately 1 cm. right side of face with comminuted fracture of zygomatic bone.

-

Incised wound right side of face approximately 1 cm.

-

Lacerated wound approximately 0.5 cm right side of face.

-

Incised wound approximately 1 cm right mandible

-

Lacerated wound approximately 1.5 cm lower jaw with fracture (comminuted) right mandible and exfoliation (detachment) of lower set of teeth.

-

Lacerated wound right ear.

-

Lacerated wound right lower lip.

-

Abrasion approximately 3 cms. middle third right forearm.

CAUSE OF DEATH:

Cerebro vascular accident (hemorrhage) secondary to traumatic injury.”[11]

Edna Bulaclac

“x x x x x x x x

The victim is approximately 1.40 m. in height and medium built. The following findings were seen.

-

Lacerated wound (gaping wound) approximately 5 cms. at fronto-parietal region of skull with linear fracture.

-

Lacerated would approximately 3 cms on left side of face with blood oozing out from left ear.

-

Hematoma left periorbital region

-

Hematoma right upper outer quadrant of right breast.

-

Hematoma at right lateral and left lateral portion of the vulva.

CAUSE OF DEATH:

Cerebro vascular accident (hemorrhage) secondary to Traumatic Injury.”[12]

Mark Joseph Bulaclac

“_

Victim is approximately 0.55 m. in height.

-

Abrasion approximately 2 cms. x 2.5 cms. right parietal region with depressed fracture approximately 1.5 cms.

-

Abrasion with hematoma approximately 2 cms x 2.5 cms right side face.

-

Hematoma – linear approximately 6 cms from right nipple line to right subcostal area.

-

Abrasion right nasal area.

CAUSE OF DEATH:

Cerebro-vascular accident secondary to blunt trauma.”[13]

Mark Joseph was an infant, four months old.[14] Dr. Embuscado concluded that judging from the nature of the wounds sustained by the victims, two types of instruments were used in inflicting their injuries, namely – a sharp instrument and a hard object.[15]

III. The Defense and Evidence of Rafael

Rafael denied the charge. Although he admitted that at the time Dionisio, his wife and their son were killed, he was near the hut of Dionisio, he swore that he did not kill the victims. He testified that on July 5, 1997 in the evening, he and two Visayan co-workers at the Imperial Subdivision, one of whom he knew only by the name of Dondon, were having a drinking spree by a sari-sari store at the corner street in Bakod Bayan. Rafael consumed only two bottles of Red Horse beer while his two Visayan companions emptied less than a case. When the three ran out of pulutan, they decided to go to the hut of Dionisio, who raised ducks and chickens, to ask him for a duck or chicken for their pulutan. When the three arrived in the hut of Dionisio between 2:00 to 3:00 a.m. of July 6, 1997, they asked Dionisio to give them a duck or chicken for their pulutan. However, Dionisio refused. Rafael and his two companions left the hut of Dionisio. The two Visayan companions of Rafael tarried and conversed in their native dialect and thereafter returned to Dionisio’s hut. Momentarily, Rafael heard a commotion coming from inside the hut of Dionisio. When he looked toward the direction of the hut, Rafael, who was about 7 to 10 meters away therefrom, saw his two Visayan companions kill Dionisio, Edna and Mark Joseph, and exit from the hut. Dondon was carrying a crowbar (bareta de kabra). Rafael was so petrified that he did not even try to help the victims. Dondon then threw the crowbar (bareta de kabra) at Rafael and threatened him with the words, “Putang ina mo papatayin ka rin namin.” However, the crowbar landed near the feet of Rafael. Afraid for his life, Rafael

immediately fled the scene and went to the house of his relatives at Sta. Rosa and Rizal, Cabanatuan City. By 5:00 a.m., Rafael was about 2 kilometers away from the hut of Dionisio, Federico Lacanilao saw Rafael at the crossing of the Sangitan Market. The next day, Rafael proceeded to Valenzuela City where he was subsequently arrested by police authorities on December 22, 1997.[16] Rafael claimed that Allan testified against him because Allan was informed that he (Rafael) was seen at the hut of Dionisio where the latter, his wife and son were killed.

IV. The Verdict of the Trial Court

On March 12, 1999, the trial court promulgated a decision, the dispositive portion of which reads:

“WHEREFORE, premises, and in the absence of any mitigating circumstance and in the presence of the aggravating circumstances of dwelling and nocturnity, the Court finds and so holds the accused RAFAEL CALOZA, JR. alias “JUNE CALOZA” guilty beyond reasonable doubt of the crime of MURDER and sentences him to suffer the penalty of:

- DEATH in Criminal Case No. 8198 (AF), and for him to indemnify the heirs of the deceased offended party in the amount of P50,000.00, and the amount of P110,000.00 representing actual damages.

- DEATH in Criminal Case No. 8199 (AF), and for him to indemnify the heirs of the deceased offended party in the amount of P50,000.00, and the amount of P110,000.00 representing actual damages.

- DEATH in Criminal Case No. 8200 (AF), and for him to indemnify the heirs of the deceased offended party in the amount of P50,000.00, and the amount of P110,000.00 representing actual damages.

No moral damages are awarded as the same is subsumed in the civil indemnity for death (People vs. R. Daen, G.R. No. 112015, 26 May 1995).

4. To pay the costs of the suits.”[17]

V. Assignment of Errors

Rafael seeks a reversal of the decision of the trial court contending that:

“I

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT RAFAEL CALOZA, JR., IN CRIMINAL CASES NOS. 8198-8199 AND 8200 DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCES OF NOCTURNITY AND DWELLING, AND THE QUALIFYING CIRCUMSTANCES OF ABUSE OF SUPERIOR STRENGTH AND TREACHERY ON THE ASSUMPTION THAT INDEED ACCUSED-APPELLANT KILLED THE VICTIMS.

III

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY UPON ACCUSED-APPELLANT ON THE ASSUMPTION THAT INDEED HE KILLED THE VICTIMS.”[18]

V.1 Verdict of this Court

Rafael avers that the prosecution was enfeebled by its failure to adduce direct evidence that he killed Dionisio, the latter’s wife and son. Allan, the principal witness for the prosecution, admitted that he did not witness the killing and that he did not see Rafael kill any of the victims. Hence, Rafael contends that the trial court committed a

reversible error in convicting him of three counts of murder.

The submission of Rafael is barren of merit. The prosecution may prove the guilt of Rafael for the crimes charged either by direct evidence or circumstantial evidence. Direct evidence is not always indispensable to prove the guilt of an accused. For circumstantial evidence to warrant the conviction of an accused under Rule 133, Section 4 of the Revised Rules of Evidence, the prosecution is burdened to prove the confluence of the following:

“(a)

There is more than one circumstance;

(b)

The facts from which the inferences are derived are proven; and

(c)

The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.”

All circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt.[19] Where the events constitute a compact mass of circumstantial evidence, the existence of every bit of which was satisfactorily proved, and the proof of each is confirmed by the proof of the other, and all without exception lead by mutual support to but one conclusion, such evidence is sufficient to establish the criminal culpability of the accused.[20] Facts and circumstances consistent with guilt and inconsistent with innocence, constitute evidence which, in weight and probative force, may surpass even direct evidence in its effect upon the court.[21] Unless required by law, the testimony of a single witness, if found credible and positive, is sufficient on which to anchor a judgment of conviction. After all, the truth is established not by the number of witnesses but by the quality of their testimonies.[22] Allan may not have actually seen the very act of the commission of the crimes charged, but he may nevertheless identify Rafael as the assailant as the latter was the last person seen with the victims immediately before and right after the commission of the crimes.[23]

In these cases, the trial court convicted Rafael on the basis of the following circumstantial evidence, viz.:

“First, the presence of the accused was witnessed positively by prosecution witness Allan Bulaclac on the night in question, and he was evasive about meeting the witness when their paths were about to cross while the witness was on his way to the hut of his brother. The witness’s testimony found corroboration in the accused’s declaration in open court that he was present at the precise time of the killing, denying, however any direct participation thereto.

Second, there were signs of bloodstains on the accused’s shirt when he was spotted by the witness.

Third, the accused was the only person seen at the crime scene before and after the killings were discovered.

Fourth, the accused did not immediately report the incident and the facts he supposedly witnessed;

Fifth, the accused took flight immediately after the commission of the incident on July 6, 1997, and it was only on December 22, 1997 that he surfaced upon his arrest by police authorities in Valenzuela, Bulacan. He did not state any plausible reasons for all his latter actions.

In general, his attitude after the actual commission of the crime, does not show any indication of innocence. In fact, they are indicative of a guilty conscience. If, as he confessed he had no direct participation in the herein brutal killing, the least he could have done was to immediately report to the authorities the incident he had witness so the culprits could be arrested right away and justice be rendered unto the brutalized victims.

Flight, to the guilty party, is the easiest way out. In this case, the accused was no exception to taking flight as a natural instinct of man to get out of harm's way. It has been settled by a long line of cases that 'flight of an accused is an indication of his guilt or of a guilty mind. Indeed, the wicked man flees though no man pursueth, but the righteous are as bold as a lion (People vs. Landicho et al., G.R. No. 116600, 3 July 196 (sic)).'"[24]

The trial court also took into account the judicial admissions of Rafael when he testified, viz.:

"(a) his presence at the place, date, and time of the killings in question; in fact, he even volunteered the possible time of the killing, i.e., 'At about 2:00 to 3:00 in the early morning [TSN 8 Oct. 1998, p. 7].'

(b) that he had no quarrel with the deceased's family, nor with the witness Allan Bulaclac; that he considers Dionisio Bulaclac as a good friend;

(c) that he did not report the herein incident to the authorities;

(d) that on that same night of the incident, he left Cabanatuan City and proceeded to relatives in Sta. Rosa, Rizal in Nueva Ecija;

(e) that he was arrested on December 22, 1997 by police authorities in Valenzuela, Bulacan."[25]

The Court has carefully examined and calibrated the evidence on record and is convinced beyond cavil that the foregoing findings of the trial court and its conclusions are correct. Case law has it that the findings of facts and of the trial court, its calibration of the testimonies of witnesses, its assessment of the probative weight of the evidence of the parties and its conclusions anchored on said findings are accorded great respect, if not conclusive effect, by this Court because of the unique advantage of the trial court of observing and monitoring at close range the witness as they testify, absent any sufficient showing, as in these cases, that the trial court ignored, misunderstood or misconstrued any cogent facts and circumstances of substance which if considered will change the outcome of the cases.[26]

The bare uncorroborated denial by Rafael of having committed the crimes charged is inherently weak as it constitutes negative self-serving evidence which cannot prevail over the positive, categorical and straightforward testimony of Allan.[27]

There is no evidence on record that Allan nurtured any ill or devious motive to falsely testify against Rafael for the commission of such dastardly crimes as murder. The ineluctable and logical conclusion is that no such improper or ill motive exists and hence, the testimony of Allan must be accorded given full faith and credit and probative weight.[28]

The Court is not impervious to the testimony of Rafael that Allan testified against him because of the latter's suspicion that after the killing of Dionisio, Edna and their young son, Rafael managed to gain entry in the house of Allan and his parents, or that Allan was told that Rafael was seen near the hut of Dionisio. Rafael failed to adduce any evidence that Allan or his parents ever filed any complaint either with the police authorities or with the courts against Rafael for trespass to dwelling. This Court cannot believe that Allan would perjure himself and pillory Rafael with the possible conviction of no less than three counts of murder each punishable by reclusion perpetua to death simply and merely because Rafael gained entry in the house of Allan and his parents, or that someone told Allan that Rafael was seen near the hut of Dionisio when the latter, his wife and infant son were killed.

Rafael failed to adduce credible proof that a certain "Dondon" and another Visayan native, who were allegedly his co-workers at the Imperial Subdivision, killed Dionisio, his wife and their infant son. Rafael relied merely and solely on his testimony to prove his claim. Rafael even failed to prove that he and his two Visayan companions had a drinking session at a corner store in Bakod Bayan. He could have easily presented the storeowner to

corroborate his allegation. However, he did not. While Rafael was testifying on cross-examination, the trial court even noted that he could not answer in a straightforward manner, and that he imputed everything on his alleged Visayan companions throughout his testimony.

V.2 Crimes Committed by Rafael

The trial court convicted Rafael of three counts of murder qualified by treachery with the generic aggravating circumstances of abuse of superior strength, dwelling and nighttime.

Re: Criminal Case No. 8200

We agree with the trial court that in Criminal Case No. 8200, Rafael is guilty of murder. This is so because at the time Mark Joseph was killed by Rafael, the victim was only an infant, about four to eight months old. It is evident that Mark Joseph was helpless and could not be expected to defend himself.[29] Well-settled is the rule that the killing by adults of minor children aged up to thirteen years old is treacherous because they could not be expected to put up a defense even if the method of attack is not shown.[30] Although the prosecution failed to adduce in evidence the certificate of birth or any authentic documents to prove the precise age of Mark Joseph when he was killed; nonetheless, Dr. Gilbert Embuscado stated in his medico legal report[31] that when he performed his autopsy on Mark Joseph, he saw that Mark Joseph was about four months old. When he testified, the doctor declared that when he examined the minor before performing an autopsy, he saw that the victim was between four to eight months old:

“Q:

And may you inform the Court what is the name of the third victim that was supplied to you as per information given to you?

A:

Mark Joseph Bulaclac, sir.

Q:

Having perform an autopsy on this particular victim, could you be in a position to know or determine the age of this particular victim?

A:

Well, I could say that the victim is approximately between four (4) to eight (8) months old, sir.

Q:

So in other words Doctor, this particular victim is a young baby?

A:

Yes, sir.”[32]

The trial court relied on the testimony of Dr. Embuscado and his medico-legal report, thus:

“As regards the victim Mark Joseph Bulaclac, whose age he placed as between four (4) to eight months (8) old, the doctor testified that he noted injury in the skull, at the right parietal portion of the head; there was a depressed fracture. A hard object could have been used in inflicting said injury. There were also abrasions and hematoma on the chest and face. A linear or long instrument could have been used in the infliction of the injuries, according to the medico legal officer.”[33]

The prosecution was not burdened to prove the precise or exact age of Mark Joseph when he was killed to prove treachery. The prosecution was only burdened to prove that Mark Joseph was at such an age and in such a physical condition that he was helpless and defenseless against the assault of Rafael. The personal observation of Dr. Embuscado when he examined Mark Joseph before conducting an autopsy that the victim was an infant, barely four to eight months old, is sufficient direct evidence to prove that Mark Joseph was so helpless and defenseless when he was killed. The helplessness of an infant is evident and requires no proof of his precise age. Hence, treachery attended the commission of the crime.[34] Rafael is guilty of murder.

Re: Criminal Cases Nos. 8198 and 8199

We do not agree with the ruling of the trial court that treachery and abuse of superior strength were attendant in Criminal Cases Nos. 8198 and 8199 for the violent deaths of Dionisio and Edna Bulaclac.

There is treachery when the offender employs means, methods or forms in the execution of the crime which tends directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[35] For this qualifying circumstance to be considered, it must be established as conclusively as the crime itself.[36] It has been held that for treachery to exist, there must be evidence showing that the mode of attack was consciously or deliberately adopted by the culprit to make it impossible or difficult for the person attacked to defend himself or retaliate.[37] In the case at bar, the evidence for the prosecution is bereft of any particulars as to the manner in which the aggression commenced or how the act which resulted in the death of the victims unfolded considering that the principal witness for the prosecution, Allan Bulaclac, never saw how the victims were actually attacked and killed. In *People v. Sambulay*, [38] this Court held that treachery cannot be considered if the lone witness for the prosecution did not see the commencement of the assault. Hence, it cannot be concluded that Rafael deliberately adopted a method or mode of attack that deprived the victims of an opportunity to defend themselves. Consequently, absent evidence on the manner as to how the killings were actually perpetrated treachery cannot be considered a qualifying or aggravating circumstance.[39]

The prosecution likewise failed to prove that abuse of superior strength attended the killing of Dionisio and Edna. Rafael killed the victims all by himself. Even if Rafael used a crowbar and sharp instrument in killing the victims, it cannot be conclusively established that Rafael abused his superior strength absent evidence that he deliberately took advantage of his superior strength.[40]

The Court does not agree with the ruling of the trial court that nighttime was attendant in the commission of the crime. While it was established, as admitted by Rafael himself, that the victims were killed between the hours of 2:00 to 3:00 a.m. of July 6, 1997, the prosecution failed to adduce evidence that Rafael took advantage of the darkness of the night to successfully consummate his dastardly acts. By and of itself, nighttime is not an aggravating circumstance. It becomes aggravating only when: (1) it is especially sought by the offender; or (2) it is taken advantage of by him; or (3) it facilitates the commission of the crime by ensuring the offender's immunity from capture.[41]

On the other hand, the prosecution proved the generic aggravating circumstance of dwelling. However, dwelling was not alleged in the Information. Hence, it cannot be appreciated in view of Sections 8 and 9, Rule 110 of the Revised Rules of Criminal Procedure, viz.:

“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.

“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.”

Qualifying as well as aggravating circumstances in the commission of the crimes must be expressly and specifically alleged in the complaint or information, otherwise the same will not be considered by the court even if proved during the trial.[42] Although the crimes in the cases at bar were committed in 1997, before the Revised Rules of Criminal Procedure took effect on December 1, 2000, the Court shall give retroactive application to said rules as they are favorable to Rafael.[43]

V.3 Proper Penalties for the Crimes

Under Article 248 of the Revised Penal Code, as amended, murder is punishable by reclusion perpetua to death. Pursuant to Article 63 of the same Code, if the penalty prescribed by law consists of two indivisible penalties, the lesser penalty shall be imposed if neither mitigating nor aggravating circumstances are present in the commission of the crime. In Criminal Case No. 8200, Rafael should be meted the penalty of reclusion perpetua, there being no modifying circumstances attendant to the commission of murder. In Criminal Cases Nos. 8198 and 8199, Rafael is guilty only of homicide defined in Article 249 of the Revised Penal Code punishable by reclusion temporal in its full term. Considering that there were no modifying circumstances in the commission of the crimes, Rafael should be sentenced to an indeterminate penalty, the minimum of which shall be within the range of prision mayor in any of its periods and the maximum which shall be within the range of reclusion temporal in its medium period.

V.4 Civil Liability of Rafael

As to damages, although dwelling was not alleged in the Informations, it may nonetheless be considered for the purpose of determining liability of Rafael for exemplary damages since it was proved by the prosecution. The heirs of all the victims are entitled to exemplary damages in the total amount of P75,000.00 pursuant to Article 2230 of the Civil Code.[44]

The trial court correctly awarded civil indemnity of P50,000.00 to the heirs of each of the victims for each count or in the total amount of P150,000.00. In addition, however, the victims’ heirs should be awarded moral damages in the amount of P50,000.00 for each count pursuant to prevailing jurisprudence.[45]

Anent the amount of P110,000.00 as actual damages awarded by the trial court, the same should be deleted for failure of the prosecution to produce receipts in support thereof.[46] However, in lieu thereof, temperate damages under Article 2224 of the Civil Code may be recovered, as it has been shown that the deceased’s family suffered some pecuniary loss but the amount thereof cannot be proved with certainty. For this reason, an award of P15,000.00 by way of temperate damages should suffice.[47]

WHEREFORE, the Joint-Decision of the trial Court is AFFIRMED with MODIFICATION:

(1) In Criminal Case No. 8198 accused-appellant Rafael Caloza Jr. is found guilty beyond reasonable doubt of homicide under Article 249 of the Revised Penal Code. He is sentenced to suffer an indeterminate penalty of ten (10) years of prision mayor in its maximum period, as minimum, to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as maximum. He is ordered to pay the heirs of the victim, Dionisio Bulaclac, the total amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as exemplary damages and P15,000.00 as temperate damages.

(2) In Criminal Case No. 8199 accused-appellant Rafael Caloza Jr. is found guilty beyond reasonable doubt of homicide under Article 249 of the Revised Penal Code. He is sentenced to suffer an indeterminate penalty of ten

(10) years of prision mayor in its maximum period, as minimum, to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as maximum. He is ordered to pay the heirs of the victim, Edna Bulaclac, the total amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as exemplary damages and P15,000.00 as temperate damages.

(3) In Criminal Case No. 8200, accused-appellant Rafael Caloza, Jr. is found guilty beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, as amended by Republic Act 7659, qualified by treachery, and is sentenced to suffer the penalty of reclusion perpetua. He is likewise ordered to pay the heirs of the victim, Mark Joseph Bulaclac, the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as exemplary damages and P15,000.00 as temperate damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, and Azcuna, JJ., concur.

[1] Records of Criminal Case No. 8198, p. 1.

[2] Records of Criminal Case No. 8199, p. 1.

[3] Records of Criminal Case No. 8200, p. 1.

[4] Records, pp. 11-13.

[5] TSN, June 23, 1998, p. 3.

[6] Id. at 8.

[7] Id. at 4-5.

[8] Id. at 8.

[9] TSN, July 7, 1998, pp. 2-4.

[10] TSN, June 23, 1998, pp. 5-7.

[11] Exhibit "A," Records, p. 54.

[12] Exhibit "B," Records, p. 55.

[13] Exhibit "C," Records, p. 56.

[14] Exhibit "E."

[15] TSN, June 18, 1998, pp. 5-6.

[16] TSN, October 8, 1998.

[17] Records, pp. 93-94.

[18] Rollo, p. 134-135.

[19] *People v. De Guia*, 280 SCRA 141 (1997).

[20] *People v. Elizaga, et al.*, 23 SCRA 449 (1968).

- [21] *People v. Dacibar, et al.*, 325 SCRA 725 (2000).
- [22] *People v. Zinampan, et al.*, 340 SCRA 189 (2000).
- [23] *People v. Albacin*, 340 SCRA 249 (2000).
- [24] Original Records, pp. 90-91.
- [25] *Id.* at 88.
- [26] *People v. Cabande*, 325 SCRA 77 (2000).
- [27] *People v. Mahusay, et al.*, 282 SCRA 80 (1997).
- [28] *People v. Galam*, 325 SCRA 489 (2000).
- [29] *U.S. v. Douglass*, 2 Phil. 461, 472 (1903); *U.S. v. De Jesus*, 14 Phil. 190 (1909); *U.S. v. Oro*, 19 Phil. 548 (1911).
- [30] *People v. Cruz*, G.R. No. 127789, April 2, 2002; *People v. Abejar*, 213 SCRA 569 (1993).
- [31] Exhibit “C.”
- [32] TSN, *Embuscado*, June 18, 1998, p. 10.
- [33] Original Records, p. 85.
- [34] *People v. Liban*, 345 SCRA 453 (2000).
- [35] Article 14(16), Revised Penal Code.
- [36] *People v. Labitad*, G.R. No. 132793, May 7, 2002.
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- [41] *People v. Silva, et al.*, G.R. No. 140871, August 8, 2002.
- [42] *People v. Legaspi*, 357 SCRA 234, 248 (2001).
- [43] *People v. Elona*, G.R. Nos. 146352-56, September 10, 2002.
- [44] *People v. Catubig*, 363 SCRA 621, 631 (2001).
- [45] *People v. Abejuela*, G.R. No. 134484, January 30, 2002; *People v. Muerong*, 360 SCRA 566, 574 (2001).
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- [47] *People v. Del Valle*, G.R. No. 119616, December 14, 2001; *People v. Sumibcay*, G.R. Nos. 132130-31, May 29, 2002.

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