

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALLEN BUSTAMANTE, APPELLANT.

G.R. Nos. 140724-26. February 12, 2003

Ponente: CORONA, J.

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CORONA, J.:

For automatic review is the “Joint-Judgment”^{*} dated August 10, 1999 of the Regional Trial Court, Branch 25, Iloilo City, the dispositive part of which reads:

“WHEREFORE, premises considered, the court, finding the accused, Allen Bustamante, guilty beyond reasonable doubt of murder as charged in Crim. Case No. 47227 and frustrated murder as charged in Crim. Case No. 49118, hereby sentences him as follows:

1) for the first offense he is sentenced to suffer the extreme penalty of death; and

2) for the second offense he is sentenced to a penalty of twenty (20) years of reclusion temporal with such accessory penalties as provided in Article 41 of the Revised Penal Code.

The accused is also ordered to indemnify the family of George Gelfero the amount of P75,000 plus P70,760 for hospital and burial expenses; and to pay Narciso Flores P140,000 for his medical and hospital expenses, as well as P20,000 as moral damages.

The case of illegal possession of firearms is deemed dismissed in view of the filing of Crim. Case No. 47227 for murder wherein the use of illegally possessed firearm is appreciated as a special aggravating circumstance in the light of the Supreme Court ruling in the afore-cited case of *People vs. Rex Bergante*.

The accused is also ordered to pay the cost.

SO ORDERED.”[1]

In three separate Informations, the appellant was charged for committing the following: (a) frustrated murder in Criminal Case No. 49118; (b) violation of PD 1866, as amended in Criminal Case No. 49119 and; (c) murder in Criminal Case No. 47227. Specifically, these were:

(a) CRIMINAL CASE NO. 49118 (Frustrated Murder)

“That on or about the 22nd day of November, 1996, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, armed with a .22 cal. Smith and Wesson revolver (without serial number) with treachery, with evident premeditation and with intent to kill, did then and there wilfully, unlawfully and criminally shoot, hit and wound Narciso Flores, with the said revolver with which the accused was provided at the time, thereby causing upon the said Narciso Flores gun shot wound on various parts of his body, which lesions with medical treatment will heal in twenty (20) to thirty (30) days; thus the accused, had performed all the acts of execution which would have produced the crime of murder as a consequence, but which nevertheless, did not produce it by reason of some cause or accident independent of the will of the accused, that is by the timely and immediate intervention of third person and the medical attendance afforded to the offended party, Narciso Flores.”

(b) CRIMINAL CASE NO. 49119 (Violation of PD 1866, as amended)

“That on or about the 22[nd] day of November, 1996 in this City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and criminally have in his possession, custody and control one (1) .22 cal. Smith and Wesson revolver (without serial number with two (2) empty shells of .22 cal. Magnum ammunition, one (1) live .22 cal. Magnum ammunition and two (2) live .22 cal. Ordinary ammunition without having obtained the proper license or permit to carry, to hold and possess the same, which firearm was used by the accused Allen Bustamante in shooting to death the victim, George Gelvero, with treachery and with evident premeditation.”

(c) CRIMINAL CASE NO. 47227 (Murder)

“That on or about the 22[nd] day of November, 1996 in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, armed with an unlicensed revolver, with treachery and evident premeditation, did then and there willfully, unlawfully and criminally shoot, hit and wound George Gelvero, with the said revolver with which the accused was provided at the time, thereby causing upon said George Gelvero gunshot wound on vital part of his body, which caused his death a few moments thereafter.”

The three criminal cases against the appellant were ordered consolidated by the trial court.[2] The appellant thereafter pleaded not guilty to the charges.[3] After pre-trial was waived, trial on the merits ensued.

During the trial, the prosecution presented its version of the facts.

On November 22, 1996, at around 9:30 in the evening, George Gelvero and Narciso G. Flores were inside the River Queen Hotel located in front of the Hall of Justice of Iloilo City, listening to a live band. After each consumed a bottle of beer, they decided to go home because Flores wanted to test a compressor to be used the following day in connection with his work as painter in Aurora Subdivision in Iloilo City.[4]

Flores went outside the hotel ahead of Gelvero to get a ride home while Gelvero proceeded to the hotel washroom. Flores headed towards the side of the road across River Queen hotel. He saw two persons standing by the driveway of the hotel and noticed a security guard talking to another person near the hotel’s driveway. The driveway was illuminated by light coming from the hotel and by an electrical post at the side of the road.[5]

After five minutes, Gelvero exited from the hotel. Flores waited at the side of the road in front of the River Queen hotel and was about 20 meters away from Gelvero. While Gelvero was walking towards Flores, he was shot by one of the two men standing by the driveway of the hotel. The assailant used a short firearm in shooting Gelvero who fell to the ground.[6]

In a matter of seconds, the assailant also shot Flores who was 5 to 7 meters away. Flores was hit on the left side of his waist. After the shooting, the person who was talking to the security guard of the hotel yelled “Sibat na!” while the assailant’s companion at the other side of the driveway said, “You are just dr(u)nk while we are high.” Afterwards, the three men escaped. While fleeing from the crime scene, they passed by Flores who was already lying on the ground.[7]

Flores later identified his and Gelvero’s assailant as “slit eyed, (with) dark complexion and curly hair” referring to appellant in this case. Flores also remembered the appellant wearing a white T-shirt and a pair of maong pants. Before Flores lost consciousness, he saw the three men running towards Lapaz Bridge.[8]

SPO3 Domingo Andig of the Iloilo City Mobile Group, with four members of his team, was on patrol on November 22, 1996. At past 10:00 in the evening, they were informed by their headquarters that there was a shooting incident at Bonifacio Drive in front of River Queen Hotel. They responded and proceeded to the crime

scene. Upon arrival at the scene of the crime, SPO3 Andig and his men were informed by the bystanders that the assailant, with dark complexion and wearing a white T-shirt, fled towards Lapaz Bridge (a.k.a Forbes Bridge). The two victims (Flores and Gelvero) had by then been brought already to the hospital.[9]

Acting on the information given by the bystanders, the team of SPO3 Andig together with the PNP members of Lapaz, Iloilo City immediately pursued the appellant. One of the bystanders accompanied the two police teams and proceeded to Lapaz Bridge. The bystander-informant lead the police teams to a house, made of bamboo and lawanit, with 3 rooms, located under the bridge. The house was where the appellant allegedly hid himself. The police saw two women there but they initially denied having seen anybody enter. The women later allowed the police to search the house. The appellant was discovered hiding inside one of the rooms and was immediately apprehended. The police frisked him and recovered a homemade .22 caliber gun with one live bullet and two empty shells in the cylinder of the gun. The revolver was tucked in the waist of the appellant.[10]

The women denied knowing the appellant and suggested that he must have clandestinely entered their house.[11]

Flores regained consciousness at St. Paul's Hospital[12] and later learned that Gelvero died in the same hospital.[13] The cause of Gelvero's death was cardio-pulmonary arrest secondary to irreversible hypovolemia or massive loss of blood. As a result of the gunshot wound, the heart ceased to function because of the low supply of blood.[14]

Dr. Jesse Uy of St. Paul's Hospital treated Flores for a gunshot wound in the pelvic area. The gunshot wound also fractured the abdominal cavity. According to Dr. Uy, Flores could have also died from the gunshot wound without able and timely medical attention. As a result of such treatment, Flores stayed in the hospital for a month. The bullet, however, was still embedded in the body of Flores. A month's recuperation was needed before the bullet could be surgically extracted.[15]

On November 27, 1996, Dr. Tito Doromal, medico-legal officer of PNP, Iloilo City, conducted an autopsy on the body of Gelvero. He reduced his findings in Autopsy Report No. MLA-96-182. According to Dr. Doromal, the cause of Gelvero's death was "hemorrhage secondary to bullet wound." The sole bullet wound was fatal as it hit the liver and the inferior venacava.[16]

According to the testimony of Major Robert Taneo Page, Jr., the firearm used was a .22 caliber Smith and Wesson revolver without any serial number. The two slugs or empty shells recovered from the crime scene were confirmed as having been fired from the same gun.[17]

According to SPO3 Ely Superio, a firearms and explosives PNCO at Camp Delgado, Iloilo City,[18] the appellant was not a licensed firearm holder, not being in the master list of all licensed firearm holders of Region 6.

Florentina Gelvero, mother of the victim George Gelvero, testified on the actual and moral damages that she and her family suffered. According to her, they spent P96,520.70 because of the death of her son. She told the court that the sorrow and sadness she underwent due to the death of her son could not be quantified in any amount.[19]

The defense offered its own version of the incident through the sole testimony of the appellant Allen Bustamante.

According to Bustamante, on November 22, 1996, at about 8 o'clock in the evening, he and companions Bongbong, Camlon and Nonoy went to Iloilo City proper to take a leisurely walk. After wandering for sometime in the city proper, they proceeded to Nonoy's house located under the bridge of Gaisano City. They reached Nonoy's house at about 9 o'clock in the evening and bought half a case of beer. He and his companions had already consumed twelve bottles of beer when five policemen arrived and arrested him and his companions. He later learned from a Bombo radio reporter that they were arrested by the police pursuant to the information given

by a security guard that two people went down the bridge. Appellant denied having known Gelvero or Flores.[20]

After trial, the trial court gave more credence to the prosecution evidence. It belittled the evidence of the defense which consisted merely of alibi and denial. It particularly gave weight to the testimony of eyewitness and surviving victim Narciso Flores. Moreover, the trial court appreciated the aggravating circumstance of treachery in committing the said crimes. Thus, the trial court convicted the appellant of the crimes of murder and frustrated murder.

However, it dismissed the case for illegal possession of firearm. According to the trial court –

“x x x although the gun used by the accused is without license or permit he cannot however be penalized separately from or independently of the penalties in murder and frustrated murder charges that have been filed against him. This is in accord with the Supreme Court ruling in *People vs. Rex Bergante x x x*”[21]

The trial court thus considered the use of the unlicensed firearm as an aggravating circumstance.[22] As a consequence, the appellant was meted the extreme penalty of death for committing the crime of murder and 20 years of reclusion temporal for committing the crime of frustrated murder.

The defense moved to reconsider and mainly argued that the trial court failed to consider the mitigating circumstance of minority in favor of appellant in the computation of the penalty. The trial court denied the motion for the reason that the matter was neither raised nor proved during the hearing of the consolidated cases but was made an issue by the counsel of the appellant only after the cases were submitted for decision, when he filed his memorandum. The trial court further explained that –

“It is a basic rule in evidence that a matter not raised and/or proved during the hearing cannot be admitted and appreciated in evidence. Besides, the accused, when he testified under oath on March 3, 1999, stated that he is 24 years old. His age is something personal to him and this matter is known to him even before he reaches the age of reason such that he takes note of it in his day-to-day life in such a way that whenever he is asked about it he can right away give an answer without need of somebody else to tell him.

What he said when he testified under oath that he is 24 years old simply shows that at the time he committed the crimes he was somewhere between 20 to 21 years old and what his belatedly registered certificate of birth is of dubious veracity or trustworthiness considering that the information about his date of birth which resulted to (sic) the issuance of the birth certificate was given only by his father on November 25, 1996 to the Civil Registrar of Iloilo City, or some three (3) days after the crimes were committed when said data were reported logically puts into serious doubt the credibility of the certificate of birth as a piece of documentary evidence.”[23]

Hence, this automatic review of the trial court decision with appellant assigning the lone error that –

“THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON GLARINGLY FALSE TESTIMONY”[24]

Appellant avers that his arrest was illegal. The policemen who arrested him did not have personal knowledge of the facts indicating that he committed the crime as to come under the exceptions of a warrantless arrest. The police merely acted on the information of a bystander. This bystander-informant was not, however, even presented on the witness stand to identify appellant as the assailant and corroborate the testimony of SPO3 Andig.

Appellant insinuates that the gun seized from him could have belonged to the victims Gelvero or Flores or “planted” by the police on him. If the firearm indeed belonged to appellant and was used to shoot and kill Gelvero and Flores, appellant would have thrown the gun into the river on impulse or disposed of the effects of the crime. Moreover, appellant alleges that he could not have owned a gun as he was not only unlettered but very poor.

Appellant also claims that Flores wrongly pointed to him as the culprit. Flores could not have positively identified him when he was lying on the ground fighting for his life. According to appellant, Flores could not have retained in his memory the specific features of the assailant during that critical moment in his life. He doubts Flores' credibility as a witness because of the inconsistencies in his testimony. Contrary to Flores' recollection, appellant claims that (1) he was not wearing a white T-shirt during the incident as it was his companion who was wearing one; (2) Gelvero was not shot with the tip of the shooter's gun just 2 feet away from him as it appeared that the shooter was 13 meters from Gelvero when the latter was shot; (3) Flores could not have possibly known the exact time when he passed out. According to the appellant, since he was the only available person who matched the descriptions of Flores, the prosecution resolved to pin the guilt on him on the basis of highly incredulous testimony. Furthermore, it was improbable for appellant to commit the crime as the place was sufficiently lighted.

Appellant also faults the trial court for not considering the age of appellant as a mitigating circumstance despite the submission of his birth certificate as evidence. Appellant maintains that he was still a minor when the crime happened. He claims that the birth certificate was secured before the criminal incident and not after. He therefore insists that the birth certificate was secured in good faith (though registered late in the Civil Registry).

Appellant's arguments do not convince us.

It appears that appellant failed to move to quash the Informations on the ground that he was subjected to an illegal arrest. Trial on the merits ensued without any objection on his part. Hence, he was deemed to have waived his right to challenge the alleged irregularity of his arrest. The failure of appellant to move to quash the information, his active participation in the trial and the presentation of evidence in his behalf put him in estoppel to make such challenge. Appellant therefore submitted himself completely to the jurisdiction of the court.

"It should be noted that the legality of arrest affects only the jurisdiction of court over the person of the accused. Consequently, if objection on such ground is waived the illegality of the arrest is not sufficient reason for setting aside an otherwise valid judgment rendered after the trial, free from error. The technicality cannot render the subsequent proceedings void and deprive the State of its right to convict the guilty when the facts on the record point to the culpability of the accused." [25]

Indeed, the evidence points to the culpability of the appellant.

It is noteworthy that appellant did not in any way impute any ill-motive to witness Flores or any of the police officers who apprehended him that would have prompted them to testify against him. Flores even remained clueless as to why appellant shot him. Appellant moreover testified as follows:

"ATTY. TIONGCO:

Q-

Do you know this George Gelvero before November 22, 1996?

A-

No, sir.

Q-

Did you know Narciso Flores before November 22, 1996?

A-

No, sir.

ATTY. TIONGCO:

That is all for the witness, your Honor.

COURT:

Q-

By the way, do you know any of the policemen who arrested you that evening of November 22, 1996?

A-

By face I alone I can identify the three of them. By name, no, your honor.

Q-

Was there any occasion before November 22, 1996 that you saw these policemen?

A-

No, your honor.

Q-

Can you tell the court if you know whether you have grudge or misunderstanding with these policemen or any of these policemen have any grudge or misunderstanding against you?

A- None, your honor.”[26]

Considering the foregoing testimony by appellant, there appears no plausible justification for his claim of frame-up, that is, that the gun might have been “planted” by the police on him. Frame-up is inherently one of the weakest defenses and is difficult to prove.[27] Appellant thus fails to convince this Court that he was framed up.

It remains undisputed that the place where the incident happened was sufficiently illuminated, which gave Flores the opportunity of taking a good look at the physical or facial features of the malefactor. The identification was clear and the witness did not appear to be biased against the appellant, thus, there is no reason to disbelieve his description of the assailant. In the absence of any evidence to show that the witness was moved by any improper motive, his identification of the appellant as the assailant should be given full faith and credit.

Moreover, we cannot give credence to appellant’s claim that it is unlikely for him to own a gun as he is illiterate and poor. Appellant did not make a categorical denial of the fact that he was caught with the gun. He could not in

fact make up his mind whether the gun was owned by either Flores or Gelvero, or “planted” by the police. Appellant gave alternative theories which were both unfounded.

In any event, whether or not appellant was the owner of the gun is actually irrelevant because what the law punishes is the possession of an unlicensed firearm and not the ownership thereof.

Appellant also points to minor inconsistencies in the testimony of Flores.

Appellant alludes to the testimony of Flores as inconsistent for the reason that, contrary to the latter’s claim, he was not wearing a white T-shirt during the incident. Appellant therefore claims that “it was not Allen Bustamante who had shot Narciso Flores and George Elviro (Gelvero), since, according to eyewitness Flores, the one who shot them was wearing a white T-shirt.”[28] Appellant’s deductions are illogical and misleading. As gleaned from the testimony of Flores, appellant and his companions were all wearing white T-shirts, thus:

“COURT:

Q-

Do you recall how the accused was dressed that evening?

A-

Yes, sir.

Q-

How was he dressed?

A-

White shirt and a pair of maong pants.

PROS. BIONAT.

Q-

How about the two others, were you able to see how they were dressed?

A-

Yes, sir.

Q-

The one that is near Allen Bustamante, what was he wearing?

A-

He was wearing (w)hite T-shirt and maong pants.

Q-

How about the fellow who was talking with the security guard?

A-

Also white T-shirt and maong pants.”[29]

The alleged inconsistencies as to the distance between the assailant and Gelvero, and appellant’s claim that Flores could not have possibly known the exact time when he lost consciousness are too irrelevant for an extended discussion. Suffice it to state that the perceived contradictions in the testimony of Flores merely refer to minor matters that do not touch on the commission of the crime itself and do not affect the substance of his declaration, the veracity or the weight of his testimony. Witnesses cannot be expected to give a flawless testimony all the time. Although there may be inconsistencies in minor details, the same do not impair the credibility of the witnesses, where, as in this case, there is no inconsistency in relating the principal occurrence and the positive identification of the assailant.[30] Minor discrepancies do not damage the essential integrity of the evidence in its material whole nor reflect adversely on the witnesses’ credibility.[31] We have previously held in fact that minor inconsistencies, far from detracting from the veracity of the testimony, even enhance the credibility of the witnesses, for they remove any suspicion that the testimony was contrived or rehearsed.[32]

Despite the alleged failure of the bystander-informant to testify and corroborate the testimony of SPO3 Andig, such fact alone does not necessarily impair the credibility of witness Andig or adversely affect the case of the prosecution. This Court takes judicial notice of the understandable reluctance of some people to be involved in criminal trials. The failure to volunteer what one knows to law enforcement officials or the hesitation to be identified as a witness does not necessarily impair a witness’ credibility.[33]

It must be underscored that, on the credibility of witnesses, appellate courts accord the highest respect to the assessment made by the trial court. The trial court is in the best position to assess the credibility of witnesses and their testimonies because of the trial judge’s unique opportunity to observe the witnesses first-hand and to note their manner, conduct and attitude while under examination. Hence, the trial court’s evaluation of the testimonies of Flores and SPO3 Andig, which point to the appellant as the perpetrator of the crime, leads us to disregard appellant’s assertions of innocence. Witnesses for the prosecution convincingly pointed to him as the assailant. The eyewitness and victim who lived to tell the tale stood firm in identifying appellant as the murderer. Nothing can be more positive or credible than the testimony of the surviving victim himself. The evidence on record thus compels this Court to conclude that the prosecution has established the guilt of the appellant beyond reasonable doubt.

For his part, appellant merely offered the defense of alibi and denial which were uncorroborated by any positive testimony of the people who were allegedly with him during the incident. However, time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the appellant, the former undisputedly deserves more credence and are entitled to greater evidentiary value.[34] Thus, the positive assertions of the prosecution witnesses cannot be overcome by the mere denial of appellant or by mere alibi. For alibi to prosper, not only must appellant prove that he was at another place at the time of the commission of the crime, but also that it was physically impossible for him to be at the crime scene at that time.[35]

With the foregoing points considered, the only remaining issues are the gravity of his offense and the proper penalty to be imposed upon appellant.

This Court agrees with the findings of the trial court that treachery attended the killing which qualified the crime to murder.

There is treachery when the offender commits any of the crimes against persons, employing means and method or forms in the execution thereof which tend directly and especially to insure its execution, without risk to the offender, arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person being attacked.[36] Gelvero and Flores could not have been aware that they would be attacked by appellant. There was no opportunity for either Gelvero or Flores to defend themselves as appellant suddenly fired his gun at Gelvero. Nor was Flores in a position to defend himself as appellant also shot him immediately thereafter.

With the presence of the qualifying circumstance of treachery, appellant was properly convicted for the separate crimes of murder and frustrated murder.

However, this Court disagrees with the trial court that the crimes committed were further aggravated by the use of an unlicensed firearm. While it is true that under the express provisions of RA 8294 (which amended PD 1866), the use of an unlicensed firearm aggravates the crimes of homicide or murder, RA 8294 cannot apply to the case at bar because the crime was committed prior to its effectivity. It must be noted that RA 8294 took effect on July 6, 1997.[37] The crime was, however, committed on November 22, 1996. Although the provisions of RA 8294 may be applied retroactively if beneficial to the appellant (i.e., to prevent conviction of the separate crime of illegal possession of firearm) it cannot, however, be applied retroactively if disadvantageous to him (as in this case, where it will aggravate his offense).[38] In *People vs. Valdez*,[39] this Court stated:

“However, the use of an unlicensed firearm in the case at bar cannot be considered as a special aggravating circumstance in Criminal Case No. U-8747 (for Complex Crime of Multiple Murder), also under review herein, because it will unduly raise the penalty for the four counts of murder from four reclusion perpetua to that of four-fold death. Insofar as this particular provision of RA 8294 is not beneficial to accused-appellant because it unduly aggravates the crime, this new law will not be given retroactive application, lest it might acquire the character of an ex-post facto law.”[40]

Thus, it was error for the trial court to appreciate the use of an unlicensed firearm as an aggravating circumstance and raise the penalty for Gelvero’s murder to death.

This Court cannot, however, convict appellant for the separate offense of illegal possession of firearms under PD 1866. The earlier provision of PD 1866 which justified a conviction for illegal possession of firearms separate from any other crime, cannot apply as it was already superseded by the provisions of RA 8294. As held in *People vs. Wadjaalam*: [41]

“x x x if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms.

x x x x x x x x

The law is clear: the accused can be convicted of simple illegal possession of firearms, provided that ‘no other crime was committed by the person arrested.’

Thus, insofar as it is favorable to herein appellant, the provisions of RA 8294 should be applied liberally and retroactively[42] in that appellant must be acquitted of the charge of illegal possession of firearms.[43]

Anent the issue of minority as a mitigating circumstance, it must be noted that the defense during trial never offered the information that appellant was still a minor when the incident happened. On the contrary, appellant stated during trial on March 3, 1999, when he was finally put on the witness stand, that he was already 24 years old. To recall, the incident happened on November 22, 1996 or merely two years and four months before he testified, which made him at least two to three years younger or 21-22 years old when the incident happened.

Appellant, though unschooled, was not entirely ignorant so as to be oblivious to his true and correct age when he testified.

Moreover, it was only when the memorandum was filed that appellant, through counsel, raised the issue of minority and submitted the birth certificate as evidence. If it was true that the birth certificate was secured before the crime happened, appellant had every opportunity to offer the birth certificate as evidence during the trial. But he never did. This only indicates that minority was pleaded merely as an afterthought; appellant was desperately grabbing hold of the only remaining straw to mitigate his liability.

Consequently, the said documentary evidence may not be appreciated pursuant to Section 34 of Rule 132 of the Rules of Court which provides that "(t)he court shall consider no evidence which has not been formally offered." [44]

It must also be observed that the trial court likewise erred in imposing a straight penalty of 20 years of reclusion temporal for appellant's conviction for the crime of frustrated murder in Criminal Case No. 49118. Apparently, the trial court failed to apply the provisions of the Indeterminate Sentence Law which gives the appellant the benefit of a lower penalty.

The penalty for frustrated murder is from 12 years and 1 day to 20 years of reclusion temporal. With neither an aggravating circumstance nor a mitigating circumstance present, the penalty shall be imposed in its medium period or from 14 years 8 months and 1 day to 17 years and 4 months.

Applying the provisions of the Indeterminate Sentence Law, appellant should be meted a penalty, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code, and the minimum within the range of the penalty next lower to that prescribed by the Code for the offense. [45] The penalty next lower to reclusion temporal is 6 years and 1 day to 12 years of prision mayor. Appellant should therefore be meted an indeterminate penalty of 6 years and 1 day of prision mayor as the minimum penalty to 17 years and 4 months of reclusion temporal as the maximum penalty for committing the crime of frustrated murder.

Relative to the award on damages, the trial court disposed of as follows:

"The accused is also ordered to indemnify the family of George Gelvero the amount of P75,000 plus P70,760 for hospital and burial expenses; and to pay Narciso Flores P140,000 for his medical and hospital expenses, as well as P20,000 as moral damages." [46]

However, since the trial court itself was not clear on what the amount of P75,000 represents, we hereby delete it. We also deem it proper to further re-examine the award of damages.

The hospital expenses do not appear to be properly supported by receipts and competent documents and hence cannot be awarded as actual damages. Appellant is, however, ordered to pay to the heirs of George Gelvero the amount of P41,200 as burial expenses evidenced by Exhibits "C-4" and "C-5." Also, the amount of P140,000 incurred by Narciso Flores for his medical and hospital expenses, as evidenced by Exhibits "H", "H-1", "I", "I-3", "I-4"- "I-17," should be paid by appellant.

Appellant should likewise indemnify the heirs of George Gelvero the amount of P50,000 as civil indemnity without further need of proof of damage in line with the prevailing jurisprudence and policy of the Court. [47]

For the "sadness and sorrow" [48] that Florentina Gelvero, mother of the deceased George Gelvero, suffered by reason of the death of her son, she is entitled to moral damages which is hereby increased to P50,000.

The award of P20,000 as moral damages in favor of Narciso Flores is deleted as Flores did not testify on any

emotional distress or mental anguish which he suffered as a result of the crime.

WHEREFORE, appellant Allen Bustamante is hereby pronounced guilty beyond reasonable doubt of the crimes of murder in Criminal Case No. 47227 and frustrated murder in Criminal Case No. 49118. The decision of the trial court dated August 10, 1999 is therefore MODIFIED as follows:

(1)

in Criminal Case No. 47227 (murder), appellant is sentenced to suffer the penalty of reclusion perpetua;

(2)

in Criminal Case No. 49118 (frustrated murder), appellant is sentenced to suffer the indeterminate penalty of 6 years and 1 day of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum;

(3)

in Criminal Case No. 49119 (violation of PD 1866, as amended), appellant is hereby ACQUITTED.

Appellant is also ordered to pay the heirs of George Gelfero the amount of P41,200 as actual damages, P50,000 as civil indemnity and P50,000 as moral damages. Further, he is ordered to pay Narciso Flores the amount of P140,000 as actual damages.

Costs against appellant.

SO ORDERED.

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

Ynares-Santiago, J., on leave.

Callejo, Sr., J., no part.

* Penned by Judge Bartolome M. Fanuñal.

[1] Rollo, p. 36.

[2] Record, p. 99.

[3] Record, p. 19.

[4] TSN, July 8, 1998, pp. 18-19.

[5] Ibid, pp. 24-25.

[6] Ibid, pp. 20-27.

[7] Ibid, pp. 22-28.

[8] Ibid, pp. 29-32.

[9] TSN, July 1, 1998, pp. 4-5.

[10] Ibid, pp. 11-18.

[11] Ibid, p. 16.

[12] TSN, July 8, 1998, pp. 32-34.

[13] Ibid, p. 38.

[14] TSN, August 10, 1998, pp. 9-10.

[15] TSN, September 16, 1998, pp. 1-15.

[16] TSN, April 27, 1998, pp. 1-5.

[17] TSN, October 29, 1998, pp. 9-11.

[18] TSN, July 8, 1998, pp. 3-7.

[19] TSN, March 23, 1998, pp. 7-14.

[20] TSN, March 3, 1999, pp. 2-14.

[21] Rollo, p. 92.

[22] The penalty for murder is reclusion perpetua to death. Since the law prescribes a penalty composed of two indivisible penalties, the presence of one aggravating circumstance resulted in the application of the greater penalty; Article 63, Revised Penal Code.

[23] Record, p. 285.

[24] Appellant's Brief; Rollo, p. 47.

[25] People vs. Costelo, 316 SCRA 895 [1999].

[26] TSN, March 3, 1999, p. 14; bold type ours.

[27] People vs. Padoa, 267 SCRA 64 [1997].

[28] Rollo, p. 54.

[29] TSN, July 8, 1998, p. 31; bold type ours.

[30] People vs. Bato, 325 SCRA 671 [2000].

[31] People vs. Mitra, 328 SCRA 774 [2000].

[32] People vs. Pacificador, G.R. No. 126515, February 6, 2002.

[33] People vs. Salonga, 329 SCRA 468 [2000].

[34] People vs. Monteron, G.R. No. 130709, March 6, 2002; Tecson vs. Sandiganbayan, 318 SCRA 80 [1999].

[35] People vs. Alvarado, G.R. No. 145730, March 19, 2002.

[36] People vs. Sindol, G.R. No. 131734, March 7, 2002 citing People vs. Lascota, 275 SCRA 591 [1997].

[37] RA 8294 was approved on June 6, 1997 and published on June 21, 1997.

[38] People vs. Adame, G.R. No. 133007, November 29, 2000.

[39] 304 SCRA 140 [1999].

[40] Bold type ours.

[41] G.R. No. 136149-51, September 19, 2000.

[42] Article 22, Revised Penal Code.

[43] People vs. Bernal, G.R. Nos. 132791 & 140465-66, September 2, 2002.

[44] People vs. Canonigo, G.R. No. 133649, August 4, 2000.

[45] Section 1, RA 4103, as amended.

[46] Rollo, p. 36.

[47] People vs. Base, 329 SCRA 158 [2000]; People vs. Daraman, 294 SCRA 27 [1998].

[48] TSN, March 23, 1998, pp. 7-14.

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