

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MELCHOR RAFAEL Y LEGASPI, MARIO RAFAEL Y LEGASPI, AND
MAXIMO RAFAEL Y MACASIEB, ACCUSED.**

G.R. Nos. 146235-36. May 29, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal by way of automatic review from the decision,[1] dated December 8, 2000, of the Regional Trial Court, Branch 217, Quezon City, convicting accused-appellants, Melchor and Mario Rafael, of frustrated murder and murder in Criminal Case Nos. Q-94-59453 and Q-94-59454, respectively. Accused-appellants were accused with their father Maximo Rafael under the following informations alleging —

In Criminal Case No. Q-94-59453 (Frustrated Murder),

That on or about the 28th day of August 1994, in Quezon City, Philippines, the said accused, conspiring, confederating together, and mutually, helping one another with evident premeditation, treachery, and superior strength, did then and there, wilfully, unlawfully, and feloniously with intent to kill, attack, assault, and employ personal violence upon the person of ALEJANDRA MACARAEG-RAFAEL, by then and there hacking her with a bolo and hitting her on the different parts of her body, thereby inflicting upon her serious and mortal wounds which ordinarily would cause the death of said ALEJANDRA MACARAEG-RAFAEL, thus performing all the acts of execution which should have produced the crime of MURDER, as a consequence but nevertheless did not produce it by reason of causes independent of their will, that is the timely and able medical attendance rendered to said ALEJANDRA MACARAEG-RAFAEL which prevented her death, to her damage and prejudice.

CONTRARY TO LAW.[2]

and in Criminal Case No. Q-94-59454 (Murder),

That on or about the 28th day of August 1994, in Quezon City, Philippines, the said accused, conspiring, confederating together and mutually helping one another, with evident premeditation, treachery and superior strength, by then and there hacking her [GLORIA TUATIS-RAFAEL] with the use of a bolo and hitting her on the different parts of her body, thereby inflicting upon her serious and mortal wounds which was the direct and immediate cause of her death, to the damage and prejudice of the heirs of said GLORIA TUATIS-RAFAEL.

CONTRARY TO LAW.[3]

Accused Maximo Rafael was tried ahead of accused-appellants as he was the only one in custody at the time. On October 30, 1995, he was found guilty as charged and sentenced in Criminal Case No. Q-94-59453 (frustrated murder) to the indeterminate penalty of six (6) years of prision correccional, as minimum, to twelve (12) years of prision mayor, as maximum, and to death in Criminal Case No. Q-94-59454 (for murder). On appeal, this Court found Maximo Rafael guilty not as a principal but only as an accomplice in the commission of the crimes and accordingly sentenced him to two (2) years, eleven (11) months, and eleven (11) days of prision correccional, as

minimum, to eight (8) years, eight (8) months, and one (1) day of prision mayor, as maximum, for frustrated murder, and to eight (8) years, eight (8) months, and one (1) day of prision mayor, as minimum, to fifteen (15) years, six (6) months, and twenty (20) days of reclusion temporal, as maximum, for murder.[4]

In 1996, accused-appellants Melchor and Mario Rafael were finally arrested.[5] On November 10, 1997, both were arraigned, each one entering a plea of not guilty.[6] Trial on the merits then ensued.

The prosecution presented the following witnesses: Rogelio Rafael, who is the husband of Gloria and the son of Alejandra Rafael, the victim Alejandra Rafael herself; Leonilo Hamoy, a neighbor of Rogelio Rafael; and Dr. Florante F. Baltazar, chief of the Philippine National Police (PNP) National Capital Region Crime Laboratory. The gist of their testimonies is as follows:

At around 8 o'clock in the evening of August 28, 1994, Alejandra Rafael and her daughter-in-law Gloria were in the kitchen on the ground floor of their residence on Rosal Street, Pingkian, Barangay Pasong Tamo, Quezon City. Alejandra Rafael was setting the table, while Gloria was cooking their dinner. As Alejandra heard a commotion outside, she opened the kitchen door to find out what it was about. Alejandra saw accused-appellant Melchor Rafael standing outside with his brother, accused-appellant Mario Rafael, and his father Maximo Rafael, who was slightly behind the latter. Alejandra knew the three very well since Maximo is the brother of her husband.

Without any warning, Melchor attacked Alejandra with a bolo, severing her left hand. He then turned to Gloria and struck her on the head with the bolo. Wounded, Gloria tried to run away, but she was pursued outside by Mario. Melchor for his part continued to attack Alejandra and stopped only because he thought she was already dead. Melchor then followed his brother outside. Before losing consciousness, Alejandra heard Maximo Rafael telling his two sons to kill the victims.[7]

Alejandra was rushed to the East Avenue Medical Center. A medical certificate (Exh. A)[8] issued to her on August 13, 1998 described her injuries as follows:

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TRAUMATIC AMPUTATION, (L) WRIST.

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HACKING WOUNDS, (R) HAND; OPEN COMPLETE FRACTURE DISTAL PART 3RD PORTION 4TH PHALANX, PROXIMAL PART 2ND PORTION 3RD PHALANX, (R) HAND.

Surgical Procedure:

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'EMERGENCY' DEBRIDEMENT, PINNING 3RD AND 4TH PHALANGES, TENORRHAPHY 3RD FLEXOR DIGITORUM.

- (8/29/94)

Rogelio Rafael, Gloria's husband, testified that in the evening of August 28, 1994, he was asleep in his bedroom on the second floor of their house when he was awakened by noise outside. When he looked through the window,

he saw his wife being pursued outside their house by accused-appellants Mario and Melchor Rafael, both of whom were armed with bolos. Accused-appellants caught up with Gloria near the pigpen and took turns stabbing and hitting her with their bolos. Rogelio said he cursed accused-appellants, "Putang-ina ninyo!" ("You sons of bitches!") as he rushed downstairs to help his wife. But, by the time he got out of the house, accused-appellants had already run away.[9]

Leonilo Hamoy, whose house adjoined that of the victims, witnessed the attack on Gloria in the evening of August 28, 1994. He was holding his child when he heard a commotion outside. When he looked out of the window, he saw Gloria Rafael coming out of her house being pursued by accused-appellants. He said he saw Gloria stumble and fall to the ground, after which she was struck by accused-appellants with their bolos. Leonilo testified that he gave a sworn statement (Exh. C)[10] to the police although the prosecution did not call him to the witness stand at the trial of Maximo Rafael.[11]

Dr. Florante F. Baltazar identified the medico-legal certificate (Exh. D)[12] and the sketches of the head (Exh. E)[13] and body injuries (Exh. F)[14] of Gloria Rafael which he had executed.[15] The medico-legal certificate (Medico-Legal Report No. M-1402-94) issued by him stated:

SPECIMEN SUBMITTED:

Cadaver of Gloria Rafael, about 29 years old, 147 cm. in height, and a resident of Pingkian Village, Quezon City.

PURPOSE OF LABORATORY EXAMINATION:

To determine the cause of death.

FINDINGS:

Fairly developed, fairly nourished female cadaver in rigor mortis with postmortem lividity over the dependent portions of the body. Conjunctivae, lips and nailbeds were pale.

EXTERNAL INJURIES: HEAD, TRUNK, AND EXTREMITIES:

- 1) Hacking wound, left occipital region, 5 cms. from the posterior midline, measuring 8 x 2 x 2 cms. depth, directed downwards, anteriorwards, slightly towards midline, fracturing the left occipital bone.
- 2) Hacking wound, right parieto-occipital region, 14 cms. from the mid-sagittal line, measuring 7 x 2 x 3.5 cms. depth, directed slightly downwards, posteriorwards and towards midline, fracturing the right parieto-occipital bone;
- 3) Stab wound, anterior right upper thorax, 116.5 cms. from the heel, 8 cms. from the anterior midline, measuring 1.7 x 0.7 x 20 cms. depth, directed downwards, posteriorwards, right to left, fracturing the sternum at the level of 2nd thoracic rib, piercing the pericardium, ascending aorta, lower lobe of the left lung, exiting at the 6th left intercostal space.
- 4) Stab wound, anterior right upper thorax, 118 cms. from the heel, 12 cms. from the anterior midline, measuring 3 x 1.5 x 19 cms. depth, directed slightly upwards, slightly posteriorwards, right to left thru the muscle tissue.
- 5) Stab wound, anterior right thorax, 111 cms. from the heel, passing thru the 4th right intercostal space, measuring 2 x 0.4 x 10 cms. depth, directed downwards, posteriorwards, towards midline, piercing the lower lobe of the right lung, right dome of the diaphragm and right lobe of the liver.
- 6) Stab wound, anterior right lower thorax, 108 cms. from the heel, 14 cms. from the anterior midline, measuring 1.7 x 0.3 x 7 cms. depth, directed downwards, posteriorwards, towards midline, thru the muscle

tissue.

- 7) Multiple abrasions, right knee, measuring 3.5 x 1.5 cms., along its anterior midline.
- 8) Linear abrasion, posterior left lumbar region, measuring 21 x 0.2 cms., 3 cms. from the posterior midline.
- 9) Linear abrasion, posterior right shoulder, measuring 10 x 0.3 cm., 17 cms. from the posterior midline.
- 10) Multiple abrasions, anterior right deltoid region, measuring 8 x 1 cm., 6.5 cms. lateral to its anterior midline.
- 11) Stab wound, posterior left deltoid region, 3 cms. medial to its posterior midline, measuring 1 x 0.4 cm., 2 cms. depth, thru the muscle tissue.
- 12) Incised wound, posterior distal 3rd left arm, 4 cms. lateral to its posterior midline, measuring 6 x 2 cms.
- 13) Incised wound, posterior right deltoid region, measuring 5.5 x 3 cms., bisected by its posterior midline.
- 14) Stab wound, posterior middle 3rd right arm, 4 cms. lateral to its posterior midline, measuring 2.3 x 1 cm., directed upwards, slightly anteriorwards, right to left, exiting at the anterior middle 3rd right arm, 6 cms. medial to its anterior midline, entry - exit measuring 7 cms.
- 15) Abrasion, right elbow, measuring 1.4 x 1 cm., along its posterior midline.
- 16) Stab wound, posterior proximal 3rd right forearm, 3.4 cms. lateral to its posterior midline, measuring 4 x 1 cm., directed slightly downwards, anteriorwards, towards midline, exiting at the anterior proximal 3rd right forearm, measuring 2 x 0.5 cms., along its anterior midline, entry-exit measuring 6 cms.
- 17) Stab wound, anterior middle 3rd right forearm, measuring 3.5 x 1.5 cms., 5 cms. lateral to its anterior midline, directed downwards, anteriorwards, towards midline, exiting at the anterior middle 3rd right forearm, measuring 2.2 x 0.6 cms., 3 cms. lateral to its anterior midline, entry-exit measuring 3 cms.
- 18) Multiple abrasions, left knee, measuring 4 x 2 cms., along its anterior midline.

INTERNAL FINDINGS:

- There were subdural and subarachnoidal hemorrhages.
- Recovered from the stomach about 2 glasses of partially digested food particles mostly of rice.

CONCLUSION:

Cause of death is hacking and stab wounds, head, body, and extremity.[16]

Accused-appellant Mario Rafael's defense was alibi. He testified that on August 14, 1994, he left for Isabela upon learning from the mother of his common-law spouse Myrna that one of their children was sick. He said that for the next two years he never left Isabela.[17] His claim was corroborated by his common-law wife Myrna, who testified that when these crimes were committed on August 28, 1994, accused-appellant was with her in Malanit, Isabela, which was more than 250 kilometers away from Quezon City. She claimed that Mario stayed on for two years working as a cook at the "Mabuhay" restaurant, of which she was the manager, until he was arrested sometime in September 1996.[18]

On the other hand, accused-appellant Melchor Rafael admitted to the crimes but invoked the mitigating circumstances of passion and obfuscation on his part and provocation on the part of the victims. He claimed that in the afternoon of August 28, 1994, he was invited by Rogelio Rafael, whom he called "Kuya Robert," to a drinking session at the latter's house. He arrived there alone at around 7 o'clock in the evening and found

Rogelio Rafael drinking with two companions. He joined them and consumed four bottles of beer. Melchor claimed that Rogelio's wife, Gloria Rafael, arrived while they were drinking and that the couple had a quarrel shortly thereafter. The couple then went outside. Gloria eventually returned and told him, "Punyeta nandito ka na naman!" ("Son of a bitch, you're here again!") Then, she allegedly told him, "Putang ina, wala na ba kayong magawa kundi ayain n[an]g ayain ang Kuya Robert mong uminom?" ("Son of a bitch, don't you have anything better to do than to keep inviting your Kuya Robert to drink?")

Melchor said Alejandra Rafael arrived shortly, and she too had derogatory words for him, as she said, "Nandito na naman ang patay-gutom." ("The good-for-nothing is here again.") At this, accused-appellant claimed he lost control of himself ("nagdilim ang paningin ko") and got hold of "two sharp objects" and struck Alejandra Rafael with them. When he saw Gloria Rafael running towards the door, he pursued her outside the house. He said that when Gloria tripped near the pigpen and fell on her back, he stabbed her "with the knife [he] was holding." He then went into hiding. On cross-examination, Melchor denied he harbored a grudge against Gloria and Alejandra Rafael.[19]

On December 8, 2000, the trial court rendered its decision, the dispositive portion of which states:

WHEREFORE, finding accused Melchor Rafael and Mario Rafael guilty beyond reasonable doubt in each of the offenses charged, judgment is hereby rendered as follows:

In Criminal Case No. Q94-59454 (for Murder), accused are hereby sentenced each to suffer the penalty of death and both are ordered to pay the heirs of Gloria Rafael the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Ninety Four Thousand Pesos (P94,000.00) as actual damages, Fifty Thousand Pesos (P50,000.00) as moral damages, and Twenty Thousand Pesos (P20,000.00) as exemplary damages.

In Criminal Case No. Q94-59453 (for Frustrated Murder), accused are hereby sentenced each to suffer an indeterminate penalty of six (6) years and one (1) day of Prison Mayor, as MINIMUM, to fourteen (14) years, eight (8) months, and one (1) day of Reclusion Temporal, as MAXIMUM, and both are ordered to pay Alejandra Rafael the sum of Thirty Six Thousand Five Hundred Fifty Pesos (P36,550.00) as actual damages and Twenty Thousand Pesos (P20,000.00) as exemplary damages.

SO ORDERED.[20]

The trial court held that the crimes were qualified by treachery and abuse of superior strength, although the latter had been absorbed by the former. It also appreciated the aggravating circumstance of dwelling with respect to the killing of Gloria Rafael.

Hence this appeal. Accused-appellants make the following assignment of errors:

- THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIMES OF MURDER AND FRUSTRATED MURDER DESPITE THE INCREDIBLE, INCONSISTENT, IF NOT CONTRADICTORY TESTIMON[IES] OF THE PROSECUTION WITNESSES.
- THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIMES OF MURDER AND FRUSTRATED MURDER DESPITE THE FACT THAT ACCUSED-APPELLANTS' GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.[21]

First. Accused-appellants contend that Alejandra Rafael admitted in her testimony that she was at all times in the kitchen during the incident and, therefore, she could not have seen them help each other in attacking Gloria Rafael. Indeed, Alejandra Rafael testified as follows:

ATTY. [Maximo B.] Usita [Counsel for Accused-Appellants]:

Q

You said that you [were] play[ing dead] and you were in fact in a squatting position, and you could not even remember how many times you were hacked and because of that condition, you did not notice what happened outside of the kitchen?

A

I only witnessed the hacking of Gloria inside the house. The incident that took place outside of the house, I am not aware.[22]

However, accused-appellants' conviction is based not only on the testimony of Alejandra Rafael but also on those of Rogelio Rafael and Leonilo Hamoy, both of whom witnessed Gloria Rafael being assaulted outside her residence.

To be sure, a reading of Alejandra Rafael's testimony, particularly during her direct examination, shows that, due to either her nervousness or the manner of questioning by counsel or the harrowing subject of her testimony, she had difficulty narrating the events in chronological fashion. This difficulty is apparently the basis of accused-appellants' contention that Alejandra's testimony is inconsistent. They point out that Alejandra testified that she was not able to set the table because she saw all three accused standing outside the kitchen door, but she later claimed that she heard a commotion outside and thus opened the door, implying it had been closed beforehand. That would mean, according to accused-appellants, that she saw them through a closed door.

This is not so. What really happened was that Alejandra heard a commotion outside while she was setting the table so she stopped what she was doing to open the door, and it was then that she saw accused-appellants. Thus, Alejandra said on cross-examination:

Q:

But before you saw the three (3) accused, you first heard a commotion, is it not?

A:

Yes, sir.

Q:

And that is the reason why you proceeded to the kitchen door to verify the same, is it not?

A:

Yes, sir.

Q:

When you saw the three (3) accused, the kitchen door was already opened?

A:

When I heard the sound, I went to the door immediately and I opened it, I saw the three (3) of them, and then, Melchor Rafael immediately hacked me.[23]

There is therefore no inconsistency on Alejandra's testimony, as accused-appellants claim.

Turning now to the testimony of Leonilo Hamoy, accused-appellants find it “surprising” that he did not shout or “do anything except watch [accused-appellants take] turns in hacking and stabbing Gloria Rafael.” The contention has no merit. With his baby in his arms and the speed with which the events unfolded, Leonilo Hamoy could not be expected to act with such speed and composure as to be able to come to the aid of Gloria Rafael. In any case, as accused-appellants themselves concede, different people react differently in a given situation.[24]

Indeed, the foregoing boils down to a question of credibility of the prosecution witnesses. But, with respect to this issue, the findings of the trial court will not be disturbed on appeal unless it be shown that it has plainly overlooked certain facts of substance which, if considered, might affect the result of the case.[25] This is because the trial court, having personally heard the witnesses and observed their deportment and manner of testifying during trial, is in a better position to decide the question of credibility.

The Court thus finds no reason to doubt the accuracy of the identification by prosecution witnesses Alejandra Rafael and Leonilo Hamoy of accused-appellants as the assailants of Gloria Rafael. Indeed, the same is supported by Rogelio Rafael’s account which, curiously, accused-appellants chose not to assail in this appeal. Against their positive identification of accused-appellants, Mario Rafael’s defense of denial and alibi cannot prevail.[26]

Second. Accused-appellants also contend that the prosecution failed to establish the presence of conspiracy in this case. Corollary to this, it must be noted that accused-appellant Melchor Rafael owns sole responsibility for the crimes, albeit invoking the mitigating circumstances of passion and obfuscation on his part and of provocation on the part of the victims.

While in the appeal of Maximo Rafael (G.R. No. 123176), this Court found that there was no conspiracy between him and his two sons, herein accused-appellants, the conspiracy between the latter having been sufficiently and convincingly established in these cases. Accused-appellants’ contention that proof of a previous agreement to commit a crime is necessary to establish conspiracy is without any basis in law.[27] For direct proof of conspiracy is rarely found, as criminals do not write down their lawless plans and plots.[28] Certainly, conspiracy can be inferred from the acts of the assailants before, during, and after the commission of the crime.[29]

In these cases, the testimonies of Rogelio Rafael, his mother Alejandra Rafael, and their neighbor Leonilo Hamoy clearly show that accused-appellants possessed a common design towards the accomplishment of the same unlawful purpose. Accused-appellants were both armed when they went to Rogelio Rafael’s residence. When Gloria Rafael, who had been seriously wounded by Melchor, tried to run away, Mario went in pursuit of her. When accused-appellants caught up with Gloria, they took turns in stabbing and hacking her. Afterwards, accused-appellants both fled and went into hiding.

Melchor’s claim as the sole assailant of the victim is apparently intended to shield his brother Mario from criminal liability, in the words of the trial court, “to offer himself as a sacrificial lamb.” In contrast to Melchor, however, the prosecution eyewitnesses do not appear to have any improper motive except to bring the perpetrators of the crimes to justice. Their testimonies, therefore, are entitled to full faith and credence.[30]

Moreover, Melchor’s version of the events does not ring true because of the following circumstances:

(1) When he said he lost control of himself (“nagdilim ang paningin ko”) because of the alleged derogatory remarks of the victims, he managed to grab not just one but “two sharp objects,” which were conveniently on hand, to enable him to immediately commence his attack on the victims. One cannot help suspecting that Melchor was really armed and that the “two sharp objects” correspond to his weapon and that of his brother Mario.

(2) He testified that he “lost control of himself” so that he “was not aware [he] was hacking Alejandra Rafael,” yet he claimed he noticed Gloria running towards the door so that he stopped hacking Alejandra and ran after

Gloria.[31] These do not appear to be the acts of a man who finds himself in the grip of passion and obfuscation but rather of one deliberately set on committing mayhem. Passion and obfuscation as a mitigating circumstance can only be appreciated only where there is an act both unlawful and sufficient to produce such condition of mind and the act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time during which the perpetrator might recover his moral equanimity.[32] In this case, however, there is no evidence other than Melchor's self-serving testimony that he was provoked by being berated by the victims.

Third. The attacks on Gloria and Alejandra Rafael were clearly qualified by treachery inasmuch as they were made without warning and by armed men against defenseless women. The two conditions for treachery, i.e., (1) that at the time of the attack, the victim was not in a position to defend himself and (2) that the offender consciously adopted the particular means, method, or form of attack employed by him,[33] have thus been met in this case. This qualifying circumstance of treachery absorbs the abuse of superior strength alleged in the informations so the latter need not be appreciated separately.[34] The crime committed as to Alejandra was clearly frustrated murder considering that the number and severity of her wounds would have caused her death had she not been rushed to the hospital and received timely medical attention.[35]

The trial court correctly held that evident premeditation, which was alleged in the information, was not established in this case. There is no proof of (a) the time when the accused determined to commit the crime; (b) an act of the accused manifestly indicating that the accused have clung to their determination; and (c) sufficient lapse of time between such determination and execution to allow them to reflect upon the consequences of their act.[36]

On the other hand, the generic aggravating circumstance of dwelling, although proven, cannot be appreciated. To be sure, the two women were attacked inside their house.[37] Gloria Rafael was killed outside the house only because she ran outside to avoid further attack. The aggression began in her house though it ended outside of it.[38] However, as this Court held in *People v. Gallego*,[39] where, under R.A. No. 7659, the effect of a generic aggravating circumstance is to raise the penalty to death, such aggravating circumstance must be alleged in the information, otherwise it cannot be appreciated:

The accused must . . . be afforded every opportunity to present his defense on an aggravating circumstance that would spell the difference between life and death in order for the Court to properly "exercise extreme caution in reviewing the parties' evidence." This, the accused can do only if he is apprised of the aggravating circumstance raising the penalty imposable upon him to death. . . The death sentence being irrevocable, we cannot allow the decision to take away life to hinge on the inadvertence or keenness of the accused in predicting what aggravating circumstance will be appreciated against him.

Now, under the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, a generic aggravating circumstance will not be appreciated by the Court unless alleged in the information. Rule 110 provides in pertinent parts:

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.

These provisions have been given retroactive effect[40] on the well-settled principle that “statutes regulating the procedure of the court will be construed as applicable to actions pending and undetermined at the time of their passage.”[41]

The penalty for frustrated murder under Art. 245, in relation to Arts. 50 and 61(2) of the Revised Penal Code, is reclusion temporal. There being no mitigating circumstance and the aggravating circumstance of dwelling not being considered in view of the failure of the prosecution to allege the same in the information, the maximum of accused-appellants’ sentence for frustrated murder would fall within the range of reclusion temporal medium, i.e., fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, the minimum of the penalty is within the range of the penalty one degree lower than reclusion temporal, i.e., prision mayor, which is from six (6) years and one (1) day to twelve (12) years. The sentence imposed by the trial court is within the foregoing range and should therefore be affirmed.

Although dwelling has not been alleged in the informations, it may nonetheless be considered for the purpose of determining liability of accused-appellants for exemplary damages in view of Art. 2230 of the Civil Code which provides that exemplary damages may be awarded as a part of the civil liability of the accused in criminal cases “when the crime was committed with one or more aggravating circumstances.”

In line with current jurisprudence, therefore, accused-appellants are civilly liable for the following damages: (a) for the murder of Gloria Rafael - P50,000.00 moral damages and P50,000.00 civil indemnity[42] and (b) for the frustrated murder of Alejandra Rafael - P30,000.00 civil indemnity[43] and P50,000.00 moral damages.[44] In both cases, due to the presence of the qualifying circumstance of treachery and the aggravating circumstance of dwelling, an award of P25,000.00 in exemplary damages should also be awarded pursuant to Art. 2230 of the Civil Code.[45] The award of actual damages for funeral and medical expenses in both cases should, however, be deleted for lack of receipts or any documents evidencing the same, as required by Art. 2199 of the Civil Code.[46] However, nominal damages of ten thousand pesos (P10,000.00) may be awarded so that the victims’ rights may be recognized or vindicated.[47]

WHEREFORE, the decision of the Regional Trial Court, Branch 217, Quezon City, finding accused-appellants Melchor and Mario Rafael guilty of the frustrated murder of Alejandra Rafael and the murder of Gloria Rafael, is **AFFIRMED** with the following **MODIFICATIONS**:

(1) In Criminal Case No. Q-94-59453 (frustrated murder), accused-appellants are ordered to pay jointly and severally the victim Alejandra Macaraeg-Rafael P30,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as exemplary damages, and P10,000.00 as nominal damages.

(2) In Criminal Case No. Q-94-59454 (murder), accused-appellants are sentenced to reclusion perpetua and ordered to pay jointly and severally the heirs of the victim Gloria Tuatis-Rafael P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as exemplary damages, and P10,000.00 as nominal damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

[1] Per Judge Lydia Querubin Layosa.

[2] Records, p. 1.

[3] Id., p. 4

- [4] *People v. Rafael*, G.R. No. 123176, Oct. 13, 2000, 343 SCRA 97. Accused Maximo Rafael was likewise ordered to pay Alejandra Rafael P36,500.00 as actual damages and P20,000.00 as exemplary damages and the heirs of Gloria Tuatis-Rafael P50,000.00 as civil indemnity, P94,000.00 as actual damages, and P50,000.00 as moral damages.
- [5] See Accused-appellants' Motion to Set Cases for Arraignment and Trial, dated July 11, 1997; Records, pp. 23-24.
- [6] Records, p. 41.
- [7] TSN (Alejandra Rafael), pp. 6-10, Sept. 9, 1998; Affidavit, dated Sept. 9, 1994, of Alejandra Rafael (Exh. B); Records, pp. 12-13.
- [8] Records, p. 155.
- [9] TSN, pp. 8-12, April 20, 1998; TSN, pp. 5-8, June 22, 1998.
- [10] Records, p. 156. Leonilo Hamoy's affidavit was dated Aug. 29, 1994.
- [11] TSN, pp. 2-15, March 22, 1999; TSN, pp. 5-7, May 12, 1999.
- [12] Records, p. 157.
- [13] *Id.*, p. 158.
- [14] *Id.*, p. 159.
- [15] TSN, pp. 2-7, Sept. 8, 1999.
- [16] Records, p. 157.
- [17] TSN, pp. 1-5, May 10, 2000.
- [18] TSN, pp. 5-8, July 5, 2000.
- [19] TSN, pp. 2-14, June 7, 2000.
- [20] RTC Decision, pp. 6-7; Records, pp. 209-210.
- [21] Appellants' Brief, p. 9; Rollo, p. 53.
- [22] TSN, p. 9, Sept. 9, 1998.
- [23] *Id.*, p. 7.
- [24] *Maandal v. People*, G.R. No. 144113, June 28, 2001; *People v. Naredo*, 276 SCRA 489 (1997).
- [25] *People v. Punsalan*, G.R. No. 145475, Nov. 22, 2001; *People v. Cañares*, G.R. No. 137243, Nov. 22, 2001.
- [26] *People v. Francisco*, G.R. No. 138022, Aug. 23, 2001; *People v. Miana*, G.R. No. 134565, Aug. 9, 2001; *People v. Maandal*, G.R. No. 144113, June 28, 2001.
- [27] *People v. Estepano*, 307 SCRA 701 (1999).
- [28] *People v. Pagpaguitan*, 315 SCRA 226 (1999).
- [29] *People v. Templa*, G.R. No. 121897, Aug. 16, 2001; *People v. Hapa*, G.R. No. 125698, July 19, 2001.
- [30] *People v. Galvez*, G.R. No. 136790, March 26, 2001.

[31] TSN, p. 7, June 7, 2000.

[32] *People v. Lobino*, 317 SCRA 606 (1999).

[33] *People v. Reyes*, G.R. Nos. 137494-95, Oct. 25, 2001.

[34] *People v. Arrojado*, 350 SCRA 679 (2001).

[35] REVISED PENAL CODE, ART. 14.

[36] *People v. Cabug*, G.R. No. 123149, March 27, 2001; *People v. De la Tongga*, 336 SCRA 687 (2000).

[37] It appears that the house is also Alejandra Rafael's residence per her affidavit, dated September 9, 1994; Exh. B; Records, pp. 12-13.

[38] See *People v. Uycoque*, 246 SCRA 769 (1995).

[39] 338 SCRA 21 (2000).

[40] See *People v. Gano*, G.R. No. 134373, Feb. 28, 2001; *Tangan v. People*, 352 SCRA 599 (2001); *People v. Arrojado*; 350 SCRA 679 (2001).

[41] *Ocampo v. Court of Appeals*, 180 SCRA 27 (1989); *Alday v. Camilon*, 120 SCRA 521 (1983); *People v. Sumulong*, 77 Phil. 764 (1946).

[42] E.g., *People v. Punsalan*, G.R. No. 145475, Nov. 22, 2001.

[43] *People v. Pacaña*, 345 SCRA 72 (2000).

[44] *People v. Singh, et al.*, G.R. No. 129782, June 29, 2001.

[45] *People v. Catubig*, G.R. No. 137842, Aug. 23, 2001.

[46] The receipts evidencing such damages apparently were only presented in the trial of Maximo Rafael.

[47] *People v. Sanchez, et al.*, G.R. Nos. 121039-45, Oct. 18, 2001; *People v. Candare*, 333 SCRA 358 (2000).

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