Supreme Court E-Library

SECOND DIVISION

[G.R. No. 137364. June 10, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GONZALO MASAGNAY *alias* "JUN MASAGNAY",** *appellant.*

SYNOPSIS

Appellant herein was charged with murder for the death of one Romeo L. Garcia. He was among the four persons who forcibly entered the house of the victim. According to witnesses, the appellant was the one who stabbed Romeo, while another one hit the victim with a lead pipe and still another threw hollowblocks on the victim's head. The trial court rendered a decision finding appellant as co-conspirator and principal by direct participation of the crime of murder and was sentenced to suffer the penalty of *reclusion perpetua*. Hence, appellant filed the present petition for review. The appellant assailed the decision of the trial court only on two grounds: (1) that the appellant did not conspire in the killing of the victim; and (2) that abuse of superior strength did not qualify the killing to murder.

In affirming the decision of the trial court, the Supreme Court ruled that the appellant, with his three companions, in forcibly entering the house of the victim and thereafter inflicted injury upon the victim, one after the other, manifested a common intent or desire to kill Romeo as they acted in concert in the commission of the crime. The Court also ruled that the attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity. Hence, the prosecution amply established the existence of the qualifying circumstance of abuse of superior strength.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON; ENTITLED TO THE HIGHEST DEGREE OF RESPECT AND WILL NOT BE DISTURBED ON APPEAL.— It is a well-entrenched doctrine

Supreme Court E-Library

that the trial court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts and circumstances of weight and substance which would have affected the result of the case.

2. ID.; ID.; ID.; NOT AFFECTED BY THE BLOOD RELATIONSHIP BETWEEN THE WITNESS AND THE VICTIM.— The Court had carefully examined the testimonies of both Estrella and Rolando and there is no indication that the trial court's assessment of their credibility is tainted with arbitrariness or oversight of some fact and circumstance of weight and influence. A wife's identification of the accused draws strength from the rule that family members who have witnessed the killing of their loved one usually strive to remember the faces of the assailants. As the Court has held in *People vs. Villarama,* blood relationship between a witness and the victim does not, by itself impair the credibility of witnesses – on the contrary, relationship strengthens credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit.

3. ID.; ID.; ID.; WORTHY OF FULL FAITH AND CREDIT IN THE ABSENCE OF IMPROPER MOTIVE TO TESTIFY AGAINST THE ACCUSED.— Neither had the defense presented evidence as to any improper motive that could have moved the principal witnesses of the prosecution to testify against appellant. The absence thereof sustains the conclusion that no improper motive existed and that the testimonies of Estrella and Rolando are worthy of full faith and credence. With the prosecution witnesses' positive identification of appellant as one of the perpetrators in the killing of Romeo Garcia, the trial court did not err in convicting appellant of Murder beyond reasonable doubt.

4. CRIMINAL LAW; CONSPIRACY; PRESENCE THEREOF CAN BE INFERRED FROM THE ACTS OF THE ACCUSED WHICH CLEARLY MANIFEST A CONCURRENCE OF WILL, COMMON INTENT OR DESIGN TO COMMIT A CRIME; CASE AT BAR.— As the Court has held in *People vs. Tuppal,* conspiracy can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime. In conspiracy, it is sufficient that at the time

Supreme Court E-Library

of the aggression, all the accused manifested by their acts a common intent or desire to attack so that the act of one accused becomes the act of all. The fact that appellant together with Edwin Masagnay, a certain Jun and Pilong whose surnames are not known to the prosecution witnesses, forcibly entered the house of victim Romeo by destroying its door, and then one after another, inflicted injury on the victim with appellant stabbing Romeo with a *gulukan*, followed by Edwin hitting Romeo with a lead pipe, then Jun stabbing Romeo with a knife with a wooden handle and while Romeo laid prostrate, face up, Pilong dropped several hollow blocks on the face and body of Romeo; after which, they ran away, certainly manifest a common intent or desire to kill Romeo. They acted in concert in the commission of the same, manifesting a common purpose or design and unity in its execution. Conspiracy is thus established by the prosecution beyond reasonable doubt.

5. ID.; ID.; EACH CONSPIRATOR IS RESPONSIBLE FOR ALL THE ACTS OF THE OTHERS; PRESENT IN CASE AT BAR.— Conspiracy having been proven, the precise degree of culpability of each of the accused is of no moment. The familiar rule in conspiracy is that when two or more persons agree or conspire to commit a crime, each is responsible, when the conspiracy is proven, for all the acts of the others, done in furtherance of the conspiracy. Thus, the Court finds no merit to appellant's claim that having merely inflicted a superficial wound on the victim, he should not be held liable for Murder. Furthermore, the fact that appellant chased Rolando when the latter ran towards the cornfield before his co-accused Jun dealt the fatal blow on the right side of the chest of Romeo, does not relieve appellant of or reduce his criminal liability as a principal in the commission of the crime. To be a conspirator, one need not participate in every detail of execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy.

6. ID.; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; TO BE APPRECIATED THERE MUST BE A DELIBERATE INTENT TO TAKE ADVANTAGE THEREOF; PRESENT IN CASE AT BAR.— In the *Cañete* case, the Court held: Before abuse of superior strength may be appreciated, it must be clearly shown that there was deliberate intent on the

Supreme Court E-Library

part of the malefactor to take advantage thereof. To justifiably appreciate said circumstance, not only is it necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed by both sides, but it is further necessary to analyze the incidents and episodes constituting the total development of the event (*People vs. Escoto*, 244 SCRA 87; 97-98 [1995], citing *People vs. Cabiling*, 72 SCRA 285 [1976]). Tested against those requirements, the prosecution, in the present case, had amply established the existence of the qualifying circumstance of abuse of superior strength. Appellant together with his three co-accused, namely: Edwin Masagnay, a certain Jun and one Pilong whose surnames are not known to the prosecution witnesses, barged into the house of the victim after the latter had taken refuge therein, and notwithstanding the couple's plea that they settle their differences the next day, by forcibly breaking the door and one after the other took their turn in inflicting the injuries sustained by the unarmed victim, resulting to his death. Clearly, without any doubt, each of appellant and his co-accused acted in concert with the evident purpose of killing the victim. The attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

In an Information[1] dated January 15, 1997, filed with the Regional Trial Court, Branch 12, Lipa City (RTC for brevity), appellant Gonzalo Masagnay *alias* "Jun Masagnay" is charged with the crime of Murder, committed as follows:

[1] Docketed as Crim. Case No. 0026-97.

Supreme Court E-Library

That on or about the 12th day of January, 1997 at about 10:00 o'clock in the evening at the Railroad site located at Brgy. Balintawak, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, together with Edwin Masagnay *y* Barera, Jun Icabande, Richard Icabande, Rollie dela Cruz, Mardelissa dela Cruz, Edgar whose family name is unknown and one *alias* "Pilong" whose cases are pending preliminary investigation, while armed with bladed instruments, with intent to kill, with treachery and evident premeditation and taking advantage of their superior strength, conspiring and confederating together, acting in common accord and willfully, unlawfully and feloniously attack, assault and stab with the use of said bladed instruments suddenly and without warning one Romeo L. Garcia thereby inflicting upon the latter multiple stab wounds which directly caused his death.[2]

to which he pleaded not guilty upon his arraignment. Trial on the merits ensued.

Practically adopted by appellant in his Brief is the narration of facts by the RTC in its decision which was principally based on the testimonies of Estrella Garcia (Estrella for brevity) and Rolando Garcia (Rolando), wife and son, respectively, of deceased victim Romeo L. Garcia (Romeo), as follows:

Stripped of non-essentials, the evidence for the prosecution show that on January 12, 1997, at around 10:00 o'clock in the evening, Estrella Garcia (Estrella, for brevity) and her four (4) children were sleeping inside their small one (1) storey house, with two (2) rooms, made of *lawanit* and galvanized iron at Brgy. Balintawak, Lipa City; that suddenly Estrella heard people shouting, whose voices she could recognize, though she does not see them, and they were chasing her husband Romeo L. Garcia (Romeo, for brevity); that Estrella heard the voice of "*Manang*", who is a sister of the accused Gonzalo Magsanay, shouting "*Ka Romy, huwag muna kayong pumasok sa inyong bahay*"; that Estrella immediately stood up and opened their door and her husband entered their house; that after her husband entered their house, they immediately closed the door and heard the people chasing Romeo kicking and forcibly opening the same; that the spouses helped each other in pushing back the door so that it will not open; that, at this juncture, their eldest son, Rolando,

[2] Records, p. 156.

Supreme Court E-Library

who is 17 years old, was awaken (*sic*) but did nothing; that Estrella told the people outside *"Baka puwedeng ipagbukas na iyan. Bukas na ho natin pag-usapan iyan kung ano man ang problema";* that "Manang" retorted "Hindi puwede, kailangang lutasin na ngayon. Hindi puwedeng abutan ng sikat ng araw"; that the people outside the house succeeded in forcibly opening their door, the galvanized iron they were using to cover their window was detached and fell inside the house, and four (4) persons entered their house, one after another; that the first to enter the house was Gonzalo Masagnay *alias* "Jun Masagnay", who immediately stab (*sic*) the shocked Romeo Garcia with a "*gulukan*" at the right side of his body; that Edwin Masagnay, who is a brother of Gonzalo, followed and immediately hit Romeo Garcia on the head and several times on his body with the lead pipe he was carrying until the latter fell down; that, then Rolando heard his father utter the following: "Rolando *labas na, baka ikaw ay madamay pa*"; that Rolando obeyed his father and went out of their house passing through the kitchen door ran towards the cornfield; that Edwin Masagnay saw and pursued Rolando and when he failed to catch the latter, he stopped; that Rolando hid in the cornfield for a long time; that meanwhile, inside the house, while Romeo was already lying down, a certain Jun, whose surname Estrella does not know, entered the house and stab the former once on the chest with a knife with wooden handle; that the fourth person to enter the house was a certain "Pilong", whose surname Estrella does not know; that "Pilong" dropped several hollow blocks many times on the face and body of Romeo, who was then helplessly lying down and could not do anything; that thereafter, the assailants ran away and Estrella went out of their house to ask for help from their neighbors; that while Estrella was still outside their house, Rolando returned and saw the dead body of his father lying on top of the detached galvanized iron, which they used to cover their window; that when the incident was taking place, Estrella, who was only about five (5) to six (6) meters away, was not able to do anything because she was shocked and could not move; that although the incident happened at 10:00 o'clock in the evening, Estrella and Rolando were able to identify and recognize the assailants of Romeo because their "*gasera*" at the center of their house was lighted; and, that Estrella and Rolando identified Gonzalo Masagnay in open court.[3]

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[3] Penned by Judge Vicente F. Landicho.

Supreme Court E-Library

On January 15, 1998, the RTC rendered a decision,[4] the dispositive portion of which reads as follows:

> WHEREFORE, the Court finds accused, GONZALO MASAGNAY @ "JUN MASAGNAY", guilty beyond reasonable doubt, as co-conspirator and principal by direct participation of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code and sentences him to suffer the penalty of *RECLUSION PERPETUA*, to pay the heirs of Romeo L. Garcia the amount of ₱26,150.00, as actual damages, the amount of ₱50,000.00, as civil indemnity for his death, and to pay the costs of this suit.
>
> Also, pursuant to Supreme Court Circular No. 12-94, the City Jail Warden of Lipa City is directed to immediately transfer the custody and/or detention of the accused to the National Bureau of Prisons, Muntinlupa City, Metro Manila.
>
> IT IS SO ORDERED.[5]

Hence, the present petition for review on *certiorari* under Rule 45 of the Rules of Court, raising the following Assignment of Errors:

> I
>
> THE LOWER COURT ERRED IN FINDING ACCUSED-APPELLANT A CO-CONSPIRATOR, AND PRINCIPAL BY DIRECT PARTICIPATION IN THE COMMISSION OF THE CRIME.
>
> II
>
> THE LOWER COURT LIKEWISE ERRED IN FINDING THAT THE AGGRAVATING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH ATTENDED THE COMMISSION OF THE CRIME.[6]

An appeal from a conviction for a capital offense opens the whole case for review.[7] Before proceeding to resolve the

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[4] *Id*., pp. 157-159.

[5] *Id*., p. 168.

[6] Brief of Accused-Appellants, p. 1.

[7] *People vs. Manalili*, 294 SCRA 220, 256-257 (1998).

Supreme Court E-Library

assignment of errors raised by petitioner, the Court will ascertain first if the RTC committed a reversible error in giving credence to the testimonies of the prosecution witnesses, on which basis, it convicted appellant of the crime of Murder beyond reasonable doubt.

The trial court found the testimonies of Estrella and Rolando to be candid, positive and steadfast. It is a well-entrenched doctrine that the trial court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts and circumstances of weight and substance which would have affected the result of the case.[8]

The Court had carefully examined the testimonies of both Estrella and Rolando and there is no indication that the trial court's assessment of their credibility is tainted with arbitrariness or oversight of some fact and circumstance of weight and influence.[9] A wife's identification of the accused draws strength from the rule that family members who have witnessed the killing of their loved one usually strive to remember the faces of the assailants.[10] As the Court has held in *People vs. Villarama,*[11] blood relationship between a witness and the victim does not, by itself impair the credibility of witnesses — on the contrary, relationship strengthens credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit.[12]

The defense evidence consists only of the testimony of appellant. His testimony is likewise aptly narrated by the RTC, as follows:

Briefly, the accused testified that he does not know his co-accused Edwin Masagnay, Jun Icabande, Pilong Dolino, Rollie dela Cruz,

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[8] *People vs. Bon*, 396 SCRA 506, 511 (2003).

[9] *People vs. Toyco, Jr.*, 349 SCRA 385, 397 (2001).

[10] *People vs. Lovedorial*, 349 SCRA 402, 413 (2001).

[11] *People vs. Villarama,* 397 SCRA 306, 319 (2003).

[12] *Id.,* p. 319.

Supreme Court E-Library

Richard Icabande, Mardelissa dela Cruz and a certain Edgar; that he is not a co-conspirator of his co-accused; that he does not know the complainant Estrella Garcia, Roland Garcia and the other witnesses who testified against him; that on January 12, 1997, he was at his house at Brgy. Sto. Toribio, Lipa City, and at around 9:00 o'clock in the evening, he went to a store at the boundary of Barangay Balintawak and Brgy. Sto. Toribio, both of Lipa City, to buy bread; that from the store and while he was walking towards his house, he heard a commotion at the side of the street; that he does not recognize the persons involved in the commotion; that he does not also know how many persons were involved in the commotion ; that suddenly, he felt that he was stabbed at his right shoulder by someone, whom he did not recognized; that he requested somebody, whom he does not know, to bring him to the hospital and said person obliged by accompanying him in walking towards Lipa Medix; that at Lipa Medix, he was treated by a certain Dr. dela Cruz; that his wound was cleaned and sutured and he stayed at the hospital for two (2) days; that on January 4, 1997, he was fetched from the hospital by the police detachment of Lipa City and brought to the Lipa City Police Headquarters, where he was detained at the City Jail; that he never questioned the police authorities why he was detained nor filed any case against any of them; that his elder brother was the one who shouldered the expenses at Lipa Medix; and, that he did not get any medical certificate.[13]

While records disclose that prosecution witness SPO1 Mario Magnaye indeed saw appellant in the hospital,[14] there is no sufficient evidence to corroborate the testimony of appellant that he was attacked by an unknown assailant on the date and time that Romeo Garcia was killed. The defense failed to establish that he could not have been at the scene of the crime. Appellant failed to produce a medical certificate showing that he was admitted in the hospital before the crime happened at 10:00 in the evening of January 12, 1997. Appellant's bare testimony is self-serving and the trial court did not err in not giving credence

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[13] *Ibid*.; *People vs. De Leon*, 350 SCRA 11, 27 (2001).

[14] TSN, July 7, 1997, pp. 38-39.

Supreme Court E-Library

to it. Besides, the defense of alibi is worthless in the face of positive identification by the prosecution witnesses.[15]

Neither had the defense presented evidence as to any improper motive that could have moved the principal witnesses of the prosecution to testify against appellant. The absence thereof sustains the conclusion that no improper motive existed and that the testimonies of Estrella and Rolando are worthy of full faith and credence.[16] With the prosecution witnesses' positive identification of appellant as one of the perpetrators in the killing of Romeo Garcia, the trial court did not err in convicting appellant of Murder beyond reasonable doubt.

In his Brief, appellant assails the decision of the RTC only on two grounds: (1) that appellant did not conspire in the killing of Romeo Garcia; and (2) that abuse of superior strength did not qualify the crime committed to Murder.

Appellant argues that he could not have possibly conspired with the accused Jun Icambande in stabbing Romeo to death, or be considered as a principal in the commission of the crime of Murder because he stabbed Romeo only once hitting him at the right side of his body which was found on record to be only superficial. The Court is not convinced with appellant's argument.

As the Court has held in *People vs. Tuppal,*[17] conspiracy can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime.[18] In conspiracy, it is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack so that the act of one accused becomes the act of all.[19]

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[15] *People vs. Corral*, 398 SCRA 494, 504 (2003); *People vs. Casita, Jr.*, 397 SCRA 382, 397 (2003).

[16] *People vs. Garillo*, 398 SCRA 118, 130 (2003).

[17] 395 SCRA 72 (2003).

[18] *Id*., p. 81.

[19] *People vs. Buayaban*, 400 SCRA 48, 63 (2003).

Supreme Court E-Library

The fact that appellant together with Edwin Masagnay, a certain Jun and Pilong whose surnames are not known to the prosecution witnesses, forcibly entered the house of victim Romeo by destroying its door, and then one after another, inflicted injury on the victim with appellant stabbing Romeo with a *gulukan*, followed by Edwin hitting Romeo with a lead pipe, then Jun stabbing Romeo with a knife with a wooden handle and while Romeo laid prostrate, face up, Pilong dropped several hollow blocks on the face and body of Romeo; after which, they ran away,[20] certainly manifest a common intent or desire to kill Romeo. They acted in concert in the commission of the same, manifesting a common purpose or design and unity in its execution.[21]

Conspiracy is thus established by the prosecution beyond reasonable doubt. Conspiracy having been proven, the precise degree of culpability of each of the accused is of no moment.[22] The familiar rule in conspiracy is that when two or more persons agree or conspire to commit a crime, each is responsible, when the conspiracy is proven, for all the acts of the others, done in furtherance of the conspiracy.[23] Thus, the Court finds no merit to appellant's claim that having merely inflicted a superficial wound on the victim, he should not be held liable for Murder.

Furthermore, the fact that appellant chased Rolando when the latter ran towards the cornfield before his co-accused Jun dealt the fatal blow on the right side of the chest of Romeo,[24] does not relieve appellant of or reduce his criminal liability as a principal in the commission of the crime. To be a conspirator, one need not participate in every detail of execution; he need not even take part in every act or need not even know the

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[20] TSN, Estrella Garcia, April 1, 1997, pp. 4-22.

[21] *People vs. Caraig*, 400 SCRA 67, 80 (2003).

[22] *People vs. Caballero*, 400 SCRA 424, 437 (2003).

[23] *People vs. Acosta, Jr.*, 396 SCRA 348, 373 (2003).

[24] TSN, Testimony of Dra. Avelyn Garin, July 7, 1997, pp. 22-25; TSN, Testimony of Estrella Garcia, April 1, 1997, pp. 14-17.

Supreme Court E-Library

exact part to be performed by the others in the execution of the conspiracy.[25]

As to the second assigned error of the RTC, appellant argues that before the qualifying circumstance of abuse of superior strength can be legally appreciated, it must be indubitably shown that there was deliberate intent on the part of the malefactors to take advantage thereof, citing *People vs. Cañete*[26] and the prosecution must duly prove that the assailants purposely used excessive force out of proportion to the means of defense available to the person attacked, citing *People vs. Castillo*.[27]

In the *Cañete* case, the Court held:

> Before abuse of superior strength may be appreciated, it must be clearly shown that there was deliberate intent on the part of the malefactor to take advantage thereof. To justifiably appreciate said circumstance, not only is it necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed by both sides, but it is further necessary to analyze the incidents and episodes constituting the total development of the event (*People vs. Escoto*, 244 SCRA 87; 97-98 [1995], citing *People vs. Cabiling*, 74 SCRA 285 [1976]).[28]

Tested against those requirements, the prosecution, in the present case, had amply established the existence of the qualifying circumstance of abuse of superior strength. Appellant together with his three co-accused, namely: Edwin Masagnay, a certain Jun and one Pilong whose surnames are not known to the prosecution witnesses, barged into the house of the victim after the latter had taken refuge therein, and notwithstanding the couple's plea that they settle their differences the next day, by forcibly breaking the door and one after the other took their turn in inflicting the injuries sustained by the unarmed victim, resulting to his death. Clearly, without any doubt, each of appellant

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[25] *People vs. Tulin*, 364 SCRA 10, 28 (2001).

[26] 287 SCRA 490 (1998).

[27] 289 SCRA 213, 209 (1998).

[28] Note 25, p. 501.

Supreme Court E-Library

and his co-accused acted in concert with the evident purpose of killing the victim. The attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity.[29]

Under Article 248 of the Revised Penal Code, as amended by R.A. No. 7659, any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder, if committed with the qualifying circumstance of taking advantage of superior strength and shall be punished by *reclusion perpetua* to death. There being no aggravating or mitigating circumstance, the lesser penalty shall be applied, pursuant to Article 63(2) of the Revised Penal Code. Thus, the RTC correctly imposed the penalty of *reclusion perpetua*.

We come now to the damages awarded by the RTC to the heirs of deceased victim Romeo. The Court has held that in every case, trial courts must specify the award of each item of damages and make a finding thereon in the body of the decision.[30]

The RTC correctly awarded the amount of ₱50,000.00 as civil indemnity for the death of the victim.[31] However, the RTC erred in awarding the amount of ₱26,150.00 for actual damages. Its only basis for awarding said amount is the testimony of Estrella Garcia, the victim's wife who presented no receipts but only an itemized list prepared by her consisting of expenses for the wake and the burial and other items related thereto.[32] The Court has held that to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof.[33] The list submitted by Estrella is self-serving and therefore not a competent evidence. The Court can only award actual damages if supported by receipts.[34]

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[29] *People vs. Aliben*, 398 SCRA 255, 285 (2003).

[30] *People vs. Galo*, 349 SCRA 161, 178 (2001).

[31] *People vs. Delina*, 396 SCRA 386, 419 (2003).

[32] TSN, April 15, 1997, pp. 3-4.

[33] *People vs. Alfon*, 399 SCRA 64, 74 (2003).

[34] *People vs. Diaz*, 395 SCRA 52, 71 (2003).

Supreme Court E-Library

However, current jurisprudence grants the award of the amount of ₱25,000.00 as temperate damages when it appears that the heirs of the victims had suffered pecuniary losses but the amount thereof cannot be proved with certainty.[35]

Both Estrella and Rolando witnessed the killing of their husband and father, respectively, which indubitably caused them emotional shock and distress. As such, they are entitled to moral damages in the amount of ₱50,000.00.[36]

Although the circumstance of dwelling was not appreciated by the Court as an aggravating circumstance in the ascertainment of appellant's criminal liability for the reason that the same, while proven by the prosecution, was not alleged in the Information, pursuant to Secs. 8 and 9, Rule 110 of the Revised Rules of Criminal Procedure, the heirs of the victim are entitled to exemplary damages in the amount of ₱25,000.00, insofar as the civil aspect of the case is concerned.

WHEREFORE, the Court *AFFIRMS* the decision dated June 15, 1998 of the Regional Trial Court (Branch 12), Lipa City convicting Gonzalo Masagnay *alias* "Jun Masagnay" of the crime of Murder and sentencing him to suffer the penalty of *reclusion perpetua* with modifications as to damages. He is ordered to pay the Heirs of Romeo L. Garcia, the following amounts: Fifty Thousand Pesos (₱50,000.00) as civil indemnity for the death of the victim; ₱50,000.00 as moral damages; Twenty-Five Thousand Pesos (₱25,000.00) as temperate damages; and Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages, or a total of One Hundred Fifty Thousand Pesos (₱150,000.00), and to pay the costs of the suit.

SO ORDERED.

Puno (Chairman), Quisumbing, Callejo, Sr., and *Tinga, JJ.,* concur.

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[35] *People vs. De los Santos*, G.R. No. 135919, May 9, 2003.

[36] *People vs. Garcia, Jr.,* 400 SCRA 229, 241-242 (2003).