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Since petitioner was born an illegitimate child after the Family Code took effect, she has no right to use her father's surname.

WHEREFORE, upon the ground discussed above, the petition is hereby *DENIED*.

SO ORDERED.

Panganiban (Acting Chairman), Sandoval-Gutierrez and *Corona, JJ.*, concur.

Puno (Chairman), J., on official leave.

EN BANC

[G.R. No. 140762. September 10, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **PO3 ROGER ROXAS** *y* **CABASAG,** *appellant.*

SYNOPSIS

Appellant was found guilty of murder and the death sentence was imposed upon him. The trial court held that the crime was qualified by "abuse of superiority" because the victim Lorna was unarmed when she was shot on the head by the accused. The trial court also appreciated against the appellant the aggravating circumstance of dwelling which was not alleged in the information but was proven during the trial considering that Lorna was fatally shot inside her house.

In convicting the accused for murder, the trial court relied mainly on the testimonies of the following: eyewitness Joelyn, who testified that appellant shot her sister, Lorna, with a caliber .45 gun with its muzzle just two feet away from Lorna's face which caused Lorna's death; and of one Melinda Taliño, who was fetching water from a nearby artesian well. She stated that when she heard a gunshot rang out, she proceeded to the house

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of Lorna and she saw the bloodied Lorna on the floor just as appellant, holding a gun, was about to run out of the house.

Appellant, who denied having fired the fatal shot, assailed the credibility of the prosecution witnesses.

The Supreme Court affirmed his conviction on appeal, ruling: that the issue of credibility of witnesses is a question for the trial court basically to resolve; that with the positive identification by eyewitness of appellant as the perpetrator of the crime, the non-presentation of the weapon used in committing the crime would not at all be fatal; that Joelyn's relationship to the victim would not be a reason to discredit her testimony; that an attack by a man with a deadly weapon upon an unarmed woman constitutes abuse of superiority which his sex and the weapon used in the act afforded him; and that there being no attendant generic aggravating circumstance (applying the new rule that to be appreciated, a generic aggravating circumstance must be alleged in the information and proven at the trial) the lesser penalty of *reclusion perpetua* for a person who commits murder should be imposed.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT OF THE TRIAL COURT THEREON IS ENTITLED TO GREAT WEIGHT AND RESPECT ON APPEAL; CASE AT BAR.**— Appellant assails the credibility of prosecution witnesses Joelyn B. Maceda and Melinda Taliño. But, as it has so often been stated by this Court, the issue of credibility of witnesses is a question for the trial court basically to resolve. The rule is logical and well founded. It is the trial judge which has all the opportunity to observe witnesses when they testify before him and for him to then draw the line between fact and falsehood. An appellate court thus would find itself relying mostly on the assessment of the trial court in this respect. The records of this case do not disclose any reason for this Court to now deviate from this long-settled doctrine.

2. **ID.; ID.; ID.; NON-PRESENTATION OF THE WEAPON USED IS NOT FATAL IN VIEW OF THE POSITIVE**

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IDENTIFICATION OF ACCUSED AS THE PERPETRATOR OF THE CRIME; CASE AT BAR.— Appellant's argument that the trial court disregarded "the law on ballistics" when it ignored the fact that the slug found was that of a caliber .45 gun, not that of a .38 caliber handgun, like the service revolver of appellant, hardly could be material. It would only show that it was not appellant's service revolver which was used in the commission of the crime. With the positive identification by eyewitness Joelyn of appellant as being the perpetrator of the crime, the non-presentation by the prosecution of the weapon used in committing the crime would not at all be fatal. Joelyn witnessed at close range the killing of her sister. Her testimony, an eyewitness account, was found credible by the trial court.

3. **ID.; ID.; ID.; RELATIONSHIP TO THE VICTIM DOES NOT DISCREDIT A WITNESS' TESTIMONY; CASE AT BAR.**— The relationship of Joelyn to the victim would not be a reason to either discredit her or disbelieve her testimony; in fact, it should be unnatural for an aggrieved relative to falsely accuse someone else other than the actual culprit himself. Nothing was shown to indicate in any way that Joelyn was impelled by improper motive in testifying against appellant that should thus add to her credibility.

4. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; PRESENT WHEN A MAN ATTACKS AN UNARMED WOMAN WITH A DEADLY WEAPON; CASE AT BAR.**— The trial court described appellant as being a "big hulk of a man," 5'7" in height, and "muscularly bulky." At the witness stand, when Joelyn stood to identify appellant, the prosecutor noted for the record that appellant was "very much taller than the witness" who stood at 5'3" in height. According to Joelyn, Lorna was only about 5'5" in height, a fact that the defense did not dispute. The case could bring to mind *People v. Quesada.* In that case, the Court, noting that the appellant was a "robust, middle-aged man" while the deceased was a woman of about 22 years of age, appreciated the aggravating circumstance of taking advantage of superior strength when the malefactor stabbed the deceased "while she was trying to escape from his grasp, and unable to repel the attack." In this instance, Lorna was 27 years old trying to escape from appellant, an armed "hulk of a

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man," 5'7" in height, and around 33 years of age, when she was senselessly shot at close range. Still in another case, this Court said: "In several cases, we have held that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself. This is the exact scenario in this case."

5. **ID.; ID.; MURDER; PROPER PENALTY IN CASE AT BAR.**— Article 248(1) of the Revised Penal Code, as amended, penalizes a person who commits the crime of murder, attended by the qualifying circumstance of, among other circumstances, taking advantage of superior strength, with *reclusion perpetua* to death. No generic aggravating penalty being attendant, the lesser penalty of *reclusion perpetua* should be imposed.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Anthony L. Po for accused-appellant.

D E C I S I O N

VITUG, *J.*:

The Regional Trial Court of Quezon City, Branch 103, in Criminal Case No. Q-96-65242, found appellant Roger Roxas *y* Cabasag guilty beyond reasonable doubt of the crime of murder and imposed on him the penalty of death for the killing of Lorna Maceda Puno. The information under which he was arraigned, tried and convicted, read:

"That on or about the 8th day of March, 1996, in Quezon City, Philippines, the above-named accused did then and there willfully, unlawfully and feloniously with intent to kill, qualified by treachery and by taking advantage of superior strength, attack, assault and employ personal violence upon the person of LORNA PUNO nee MACEDA, by then and there shooting her with the use of a hand gun, hitting her on her left forehead, thereby inflicting upon her serious and grave wounds which were the direct and immediate cause of her untimely

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death, to the damage and prejudice of the heirs of said Lorna Puno nee Maceda."[1]

Following appellant's plea of "not guilty" to the crime charged, the prosecution and the defense presented their respective versions of the case.

Joelyn B. Maceda, a security guard at the First Unity Textile Mills in Novaliches, Quezon City, stayed with her sister, Lorna Maceda Puno, in San Roque, Bagong Pag-asa, Quezon City, in a one-storey structure with the front door leading to the kitchen and with two steps leading to the sala. Joelyn shared the house with Lorna and her husband, the couple's five-year-old son, Jonas, and a niece. Lorna, like Joelyn, was a security guard at the Citibank in Makati City. When on duty, the sisters were issued caliber .38 service firearms that they were not, however, allowed to bring home and, instead, had to entrust each time to a reliever. Although the sisters were trained to handle firearms, they, upon the other hand, only had minimal instruction on self-defense.

Between nine o'clock and nine-thirty on the evening of 8 March 1996, Joelyn was washing clothes in front of the door of their house, lighted by a fluorescent lamp, when she saw Lorna coming home from work in her type B uniform and carrying a brown bag. From a distance of barely four to five meters, Joelyn could see Lorna running away from appellant. Appellant, apparently drunk, had no clothes from waist up, was wearing shorts and carrying a gun. When Joelyn asked the pale and trembling Lorna why she was running, the latter replied, "Lyn, Lyn, enter, close the door, a man (is) following me!" (*Lyn, Lyn, pasok, sarado ang pinto, may sumusunod sa akin lalaki*). Joelyn promptly closed the door but appellant was able to kick it open. Joelyn, her forehead hit by the door, was pushed aside. Appellant grabbed Lorna's bag, opened it and, apparently not finding what he could have been looking for, hurled the bag to the floor (*binalibag po niya ang bag sa sahig*). Appellant asked Lorna, "Why did you run? Why did you not mind me?"

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[1] Records, p. 1.

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(*Bakit ka tumakbo*? *Bakit 'di mo ko pinansin?*). Lorna answered, "I did not hear you." Joelyn tried to hold the hand of appellant but he pushed her hand away. Appellant then shot Lorna with a caliber .45 gun with its muzzle just two feet away from Lorna's face. Lorna fell on the floor with half of her body outside the door and the other half inside the house. Joelyn held her sister. Lorna was still alive. A neighbor responded to Joelyn's cries for help. Lorna was brought to the hospital. At six o'clock the following morning of 9 March 1996, Joelyn went to Camp Karingal to report the incident. Later, Joelyn, accompanied by Randy who took down her statement at the camp, went to the East Avenue Hospital where Lorna had been taken.

Melinda Taliño was fetching water from a nearby artesian well (*poso*) on the evening of 8 March 1996. She proceeded to the house of Lorna from where a gunshot rang out. She saw the bloodied Lorna on the floor just as appellant, holding a gun, was about to run out of the house (*patakbo*). Melinda shouted for help. Nobody dared to immediately respond because appellant was still at the corner of an alley, a short distance away, pointing and swaying a gun. Appellant's wife and a certain Jun were seen trying to pacify him. Jun tapped appellant's hand that caused the gun to fall. Appellant's wife picked up the gun and hid it behind her. Appellant's wife and Jun then pulled appellant away.

Lorna's husband, Joseph Puno, a security guard at the Broadway Centrum in Quezon City, learned of the incident at five o'clock on the morning of 9 March 1996 when he returned home from work. There were bloodstains around the house. Appellant, who lived near the basketball court around a hundred meters away, was Joseph's *kumpare*. Joseph had known appellant, who, along with the latter's wife, usually managed the "BSDO" seminar that Joseph attended. Joseph Puno surrendered a caliber .45 empty shell which he had found at his house to PO1 Florencio Escobido. The Chief of the PNP Criminal Investigation Division in Camp Karingal forwarded the empty shell to the Director of the PNP Crime Laboratory Service in Camp Crame. In Firearms Identification Report No. FAID-143-96, P/Inspector Reynaldo Dimalanta de Guzman stated

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that the empty caliber .45 shell marked "JAP" "was fired from a caliber .45 pistol having six (6) lands and six (6) grooves twisted to the left."[2] De Guzman could only conclude that the empty shell was fired from a .45 caliber pistol. The pistol was not recovered.

Lorna, only 27 years old, died three days after she was shot. Dr. Ma. Cristina B. Freyra, Police Senior Inspector and Medico-Legal Officer at the PNP Central Crime Laboratory of the Northern Police District Command in Kamuning, Quezon City, confirmed that Lorna had suffered from a gunshot wound at the left temporal region with tattooing evident and a contusion on the left peri-orbital region and multiple abrasions on the left arm. She opined that the tattooing around the wound would attest to the fact that the distance between the muzzle of the gun and the "point of contact" could have barely been about two feet.

Appellant, a member of the Special Weapons and Tactics (SWAT) team of the Philippine National Police, did not deny his presence in the vicinity of the crime scene but he presented a different version of the incident. On the late afternoon of 8 March 1996, about six o'clock, he was playing basketball in *Barangay* Bagong Pag-asa, San Roque II, up until an hour later. Shortly thereafter, he had dinner. He and his wife then visited their *comadre*, Yolanda Daraman, whose husband, a seaman, was expected to return home. At Yolanda's house, that evening, the couple was told that Yolanda's husband had not yet arrived. On their way home, appellant noticed a suspicious-looking person who was high on drugs. The bulge on the man's waist appeared to him to be a tucked gun. Appellant approached the man, who was not from the place, to verify and to conduct a body search but just as he drew near, the man ran away. Appellant chased the man and as he did so, he passed by two *barangay tanods*, Inocencio Datu and Rudy Limbaga, who were asked by his wife to extend help by meeting the man at the other side of the area (*salubungin ninyo sa kabila*). Appellant saw the man enter

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[2] Exh. P.

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a house by kicking open its door. Appellant fired his service .38 caliber gun. He pushed the door, already half-open, but Lorna Puno sprayed tear gas on him, hitting both his eyes and momentarily losing his sight. Appellant soon heard a gunshot from inside the house. Appellant dove face down to seek cover. In the process, he lost control of his firearm. He shouted for help and heard the voices of his wife and the two *barangay tanods*. The *barangay tanods* brought him back to his house where he was informed that Lorna Puno had been shot. His wife administered first aid to his eyes but, because his eyes were not healed, he was brought the following morning by his wife to the Quezon City General Hospital.

From the hospital, appellant proceeded to Camp Karingal to clear his name after having heard that he was being implicated in the shooting incident. Appellant was disarmed by his commanding officer and instructed to subject himself to an investigation. The next day, as so directed, he came back and restricted himself to camp. His commanding officer later brought him to the Investigation Division to surrender him for investigation. Asked to give a statement, appellant told the investigator that he would wait for his lawyer. From the 10th to the 14th of March, no case was filed against appellant. On the 15th of the same month, he was presented to the inquest fiscal.

The trial court, convinced of the "lack of probity and credibility of the defense path taken by the accused,"[3] found appellant guilty of the crime of murder. It ruled that the commission of the crime was qualified by "abuse of superiority" because "Lorna was unarmed when shot on the head by the accused which single shot caused her instantaneous death."[4] It appreciated against appellant the aggravating circumstance of dwelling since both the prosecution and the defense evidence showed that Lorna was fatally shot inside her house. The trial court disposed of Criminal Case No. Q-96-65242 thusly:

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[3] RTC Decision, p. 9.

[4] *Id.*, p. 10.

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"ACCORDINGLY, judgment is hereby rendered finding the accused PO3 ROGER ROXAS *y* Cabasag GUILTY beyond reasonable doubt as Principal of the crime of MURDER, as charged herein, as defined and penalized in the Revised Penal Code, qualified by taking advantage of superior strength and, with the aggravating circumstance of dwelling, he is hereby sentenced to suffer the penalty of DEATH.

"On the civil aspect, accused Roger Roxas *y* Cabasag is ordered to pay the heirs of Lorna Puno *y* Maceda the sum of ₱50,000.00 as indemnity damages and ₱100,000.00 as exemplary damages.

"The ARMSCOR caliber .38 revolver with serial number PO7161 (Exhibit M) shall be forwarded to the PNP Firearms and Explosives Division, Camp Crame, Quezon City for safekeeping in accordance with law.

"Pursuant to law and the Rules of Court, let the entire records of this case be forwarded forthwith to the Honorable Supreme Court for automatic review."[5]

Appellant assails the credibility of prosecution witnesses Joelyn B. Maceda and Melinda Taliño. But, as it has so often been stated by this Court, the issue of credibility of witnesses is a question for the trial court basically to resolve. The rule is logical and well founded. It is the trial judge which has all the opportunity to observe witnesses when they testify before him and for him to then draw the line between fact and falsehood. An appellate court thus would find itself relying mostly on the assessment of the trial court in this respect. The records of this case do not disclose any reason for this Court to now deviate from this long-settled doctrine.

Appellant contends that the prosecution has suppressed evidence in failing to present the affidavit of Melinda calling attention to the presumption that "evidence willfully suppressed would be adversed (sic) if produced." The contention is a futile attempt to invoke exoneration. *Ex-parte* affidavits, which are often incomplete and inaccurate, are scarcely depended on and will certainly not prevail over credible statements of a witness

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[5] *Rollo*, p. 42.

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on the stand,[6] particularly when the defense has had the full opportunity to cross-examine such a witness.

Appellant's argument that the trial court disregarded "the law on ballistics" when it ignored the fact that the slug found was that of a caliber .45 gun, not that of a .38 caliber handgun, like the service revolver of appellant, hardly could be material. It would only show that it was not appellant's service revolver which was used in the commission of the crime. With the positive identification by eyewitness Joelyn of appellant as being the perpetrator of the crime, the non-presentation by the prosecution of the weapon used in committing the crime would not at all be fatal.[7] Joelyn witnessed at close range the killing of her sister. Her testimony, an eyewitness account, was found credible by the trial court.

The relationship of Joelyn to the victim would not be a reason to either discredit her or disbelieve her testimony; in fact, it should be unnatural for an aggrieved relative to falsely accuse someone else other than the actual culprit himself.[8] Nothing was shown to indicate in any way that Joelyn was impelled by improper motive in testifying against appellant that should thus add to her credibility.[9]

In asseverating that the qualifying circumstance of abuse of superior strength was not proven at the trial, appellant would premise his argument on the contention that the victim used teargas to immobilize him. There was, however, no convincing proof that the victim had indeed used teargas on appellant. The hospital record presented in court by Pastora Barte, the records officer of the Quezon City General Hospital, that appellant was treated for eye irritation and for abrasions on

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[6] *People v. Castillo*, G.R. No. 130205, 5 July 2000, 335 SCRA 100, 106.

[7] *People v. Padao*, 334 Phil. 726, 737 (1997).

[8] *People v. Rendoque*, 379 Phil. 671, 685 (2000).

[9] *People v. Payot*, 367 Phil. 311, 331 (1999).

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his right hand,[10] was not attested to by any supposed attending physician. All that Pastora could testify on was that a certain Dr. Fernandez and one Dr. Osial, who allegedly attended to appellant, were no longer connected with the hospital. Pastora admitted that she had no personal knowledge about the contents of the record; neither could she attest to the truth and veracity of its contents. A medical certificate would be hearsay and inadmissible in evidence without the affirmation or confirmation on the witness stand of the physician who prepared it[11] and corroborated by the testimony of the physician who had examined the patient.[12]

The trial court described appellant as being a "big hulk of a man," 5'7" in height, and "muscularly bulky." At the witness stand, when Joelyn stood to identify appellant, the prosecutor noted for the record that appellant was "very much taller than the witness" who stood at 5'3" in height. According to Joelyn, Lorna was only about 5'5" in height, a fact that the defense did not dispute. The case could bring to mind *People v. Quesada*.[13] In that case, the Court, noting that the appellant was a "robust, middle-aged man" while the deceased was a woman of about 22 years of age, appreciated the aggravating circumstance of taking advantage of superior strength when the malefactor stabbed the deceased "while she was trying to escape from his grasp, and unable to repel the attack." In this instance, Lorna was 27 years old trying to escape from appellant, an armed "hulk of a man," 5'7" in height, and around 33 years of age,[14] when she was senselessly shot at close range. Still in another case, this Court said: "In several cases, we have held

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[10] Exhs. 3 to 5.

[11] *People v. Marcedonio*, G.R. Nos. 78551-52, 21 December 1990, 192 SCRA 579, 586.

[12] *People v. Villagracia*, G.R. No. 94311, 14 September 1993, 226 SCRA 374, 379.

[13] 62 Phil. 446, 450 (1935).

[14] Appellant swore that he was 36 years old when he testified (TSN, 13 May 1999, p. 2).

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that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself. This is the exact scenario in this case."[15]

In imposing the death penalty, the trial court appreciated the aggravating circumstance of dwelling that was not alleged in the information.

The Solicitor General, supporting the stand taken by the trial court, would invite a revisit of the *Mauricio*[16] rule; he urges:

"We respectfully pray that this Honorable Court take a second look at its ruling in *Mauricio* and other cases retroactively applying Rule 110, Section 9. The rule prevailing before the effectivity of the new Rules of Criminal Procedure was that generic aggravating circumstances, even if not alleged in the information, may be appreciated if proven at the trial. Prosecutors and trial judges relied on this former rule. With all due respect, *the retroactive application of the new rule is manifestly unfair to the prosecutors and trial judges who relied in utmost good faith on the old rule.*

"On March 27, 2000, a mere nine (9) months before the new Rules of Criminal Procedure took effect on December 1, 2000, this Honorable Court in *People v. Mitra*, 328 SCRA 774, 792-793 rejected the contention that generic aggravating circumstances should be alleged in the information."[17] (Emphasis supplied)

With all due respect to the Solicitor General, the Court finds it difficult to reconsider its pronouncement in *Mauricio*, which has since been reiterated in several cases. Section 9, Rule 110, of the new Rules on Criminal Procedure, provides:

"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

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[15] *People v. Espina*, 383 Phil. 656, 668 (2000).

[16] *People v. Mauricio*, G.R. No. 133695, 28 February 2001, 353 SCRA 114, 125.

[17] *Rollo*, p. 135.

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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."

In *Mauricio*,[18] the Court has explained the reason for the retroactive application of the rule.

"The use of the word 'must' indicates that the requirement is mandatory, therefore failure to comply with Sec. 9, Rule 110, means that generic aggravating circumstances, although proven at the trial, cannot be appreciated against the accused if such circumstances are not stated in the information. *It is a cardinal rule that rules of criminal procedure are given retroactive application insofar as they benefit the accused.*" (Emphasis supplied.)

Even beyond that, as so expressed above, is the overriding principle that an accused has the unfettered right "to be informed of the nature and cause of the accusation against him."[19] The Court has no reason to doubt the fact that the prosecutor and trial judge must have relied in "utmost good faith" on the old rule (that a generic aggravating circumstance may be appreciated against the accused even if it is not alleged in the information), but it is not enough for this Court to now take that belief into account against appellant and to abandon a standing tenet that the law, as well as rules of procedure favorable to the accused, must be given retroactive effect. The Court realizes that neither the Solicitor General and the prosecutor nor the trial judge, are out of line; indeed, in *People v. Mitra*[20] the Court has virtually agreed to consider aggravating circumstances not alleged in the information but proved during the trial and appreciated in imposing the sentence, without necessarily impinging the constitutional right of the accused to be informed of the nature and cause of the accusation against him. Nevertheless, in

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[18] *Supra*, at p. 125.

[19] Sec. 14 (2), Art. III, Constitution.

[20] 385 Phil. 515, 534 (2000).

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subsequent cases, starting with *People v. Salalima*,[21] the Court, taking a hard look on the issue has concluded that the new rules must be given retroactive effect "in the light of the well settled rule that statutes regulating the procedure of the court will be construed as applicable to actions pending and undetermined at the time of their passage."[22]

Article 248(1) of the Revised Penal Code, as amended, penalizes a person who commits the crime of murder, attended by the qualifying circumstance of, among other circumstances, taking advantage of superior strength, with *reclusion perpetua* to death. No generic aggravating penalty being attendant, the lesser penalty of *reclusion perpetua* should be imposed.[23]

The trial court awarded "indemnity damages" of ₱50,000.00 and exemplary damages of ₱100,000.00. Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of murder or homicide.[24] The award should thus be affirmed. The award of exemplary damages is justified considering the attendance of the aggravating circumstance of abuse of superior strength that qualified the killing to murder but, considering prevailing jurisprudence, that amount should be reduced to ₱25,000.00.[25] Consistently likewise with recent decisions of the Court, an award of only temperate damages of ₱25,000.00, no adequate proof of actual damages having been shown, is warranted.[26]

WHEREFORE, the decision of the court *a quo* finding appellant PO3 Roger Roxas *y* Cabasag guilty beyond reasonable doubt of the crime of murder for the killing of Lorna Maceda

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[21] 415 Phil. 414 (2001).

[22] At p. 428.

[23] Art. 63 (3), Revised Penal Code.

[24] *People v. Cabigting*, G.R. No. 131806, 20 October 2000, 344 SCRA 86, 94 citing *People v. Larena*, 368 Phil. 614 (1999).

[25] See *People v. Catubig*, G.R. No. 137842, 23 August 2001.

[26] *People v. Delos Santos*, G.R. No. 135919, 09 May 2003; *People v. Abrazaldo*, G.R. No. 124392, 07 February 2003.

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Puno is *AFFIRMED* subject to the *MODIFICATIONS* that appellant shall suffer, instead of death, the penalty of *reclusion perpetua* and that he shall pay the heirs of the victim civil indemnity of ₱50,000.00, exemplary damages of ₱25,000.00, and temperate damages of ₱25,000.00. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Morales, Callejo, Sr. and *Tinga, JJ.*, concur.

Puno and Azcuna, JJ., abroad, on official business.

EN BANC

[G.R. No. 148912. September 10, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **TIMOTEO ESCARLOS,** *alias* **"Tomy,"** *appellant.*

SYNOPSIS

Appellant was found guilty of murder and was sentenced to death. Based on the evidence, there was a heated exchange of words between appellant and the victim and the confrontation escalated to a violent brawl. Invoking self-defense, the appellant claimed the victim pulled out a kitchen knife, hence, to save his life, appellant grabbed the weapon and used it to stab the victim.

On appeal, the Supreme Court affirmed appellant's conviction but only for homicide. The Supreme Court held: that appellant was not subjected to an unlawful aggression because the victim's act of drawing a knife could not have placed the life of appellant in actual or imminent danger; that even assuming that some danger did in fact exist, the unlawful aggression already ceased