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As modified, appellant Roger Lamasan is found *GUILTY* beyond reasonable doubt of the crime of homicide, aggravated by the use of an unlicensed firearm, and is hereby sentenced to suffer an indeterminate sentence of Twelve (12) Years of *prision mayor,* as minimum and Seventeen (17) Years, Four (4) Months and One (1) Day of *reclusion temporal*, as maximum.

Appellant is also *ORDERED* to pay the heirs of Rolando Parreñas the amount of ₱129,330.00 as actual damages, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages.

SO ORDERED.

Puno (*Chhairman*) and *Panganiban, JJ.*, concur.

Sandoval-Gutierrez and *Corona, JJ.*, on leave.

THIRD DIVISION

[G.R. No. 146271. May 29, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCIANO TINAMPAY,** *accused-appellant.*

SYNOPSIS

At about 7:00 p.m. of March 21, 1996, Eulogio Entac was squatting in a corner, looking down on the lomboy leaf he was rolling into a cigarette, when he was hacked at the back of his neck with a long *bolo*. He was almost beheaded and died instantly. Porferio Tindoc, who saw the incident, pointed to herein accused-appellant as the assailant. Appellant denied the accusation against him and claimed that the prosecution eyewitness had a grudge against him. He gave a different version of the incident. The Court, however, upheld the version of the prosecution and found accused-appellant guilty of the

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crime of murder and sentenced him to *reclusion perpetua*. Insisting on his innocence, appellant filed appealed and claimed that the trial court erred in finding him guilty beyond reasonable doubt of the crime charged.

The Supreme Court found no reason to disturb the trial court's assessment of prosecution eyewitness' testimony. It ruled that the findings of a trial court on the credibility of witnesses deserve great weight as the trial judge has a clear advantage over the appellate magistrate in appreciating testimonial evidence. Absent any showing that the trial court's calibration of credibility was flawed, it is bound by the trial court's assessment. According to the Court, appellant's denial of responsibility for the crime and his version of the hacking incident deserved scant consideration. It ruled that positive identification of the appellant would prevail over the defense of denial. Accordingly, it affirmed the decision of the trial court with modification as to the award of damages.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT WITH RESPECT THERETO DESERVE GREAT WEIGHT.— Time and again, we have ruled that the findings of a trial court on the credibility of witnesses deserve great weight as the trial judge has a clear advantage over the appellate magistrate in appreciating testimonial evidence. The trial judge is in the best position to assess the credibility of the witness as he had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination. Absent any showing that the trial court's calibration of credibility was flawed, we are bound by its assessment.

2. ID.; ID.; ID.; TESTIMONY OF LONE EYEWITNESS IS SUFFICIENT TO CONVICT IF POSITIVE AND CREDIBLE.— Considering the trial court's assessment of Tindoc's credibility, it is of no moment that he was the lone eyewitness presented by the prosecution as the running case law is that ". . . the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward

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manner." We find no reason to disturb the trial court's assessment of Tindoc's testimony.

3. **ID.; ID.; ID.; POSITIVE IDENTIFICATION OF ACCUSED PREVAILS OVER DEFENSE OF DENIAL; CASE AT BAR.**— The accused's denial of responsibility for the crime and his version of the hacking incident deserve scant consideration. Well-settled is the rule that positive identification of the accused will prevail over the defense of denial. Portions of his testimony confirm his incredulity. As pointed out by the trial court, it is incredulous that although Tinampay already knew Turtal, Anito and Janga before the hacking and he saw Turtal hack Entac, he still chased them after the hacking incident supposedly to ascertain their identities. Likewise, during the investigation of the crime, the accused did not submit a counter-affidavit despite the fact that he was allegedly not responsible for the hacking and he knew the real culprit.

4. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; ESSENCE.**— The accused's hacking of Entac was treacherous. There is treachery when the offender commits any of the crimes against persons, deliberately employing means, methods or forms of execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the victim might make. "The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim." There is no doubt that the attack on Entac was sudden and that the means employed ensured that he did not have an opportunity to defend himself. His head was bent down, looking at the *lomboy* leaf he was rolling. There was no forewarning of the impending attack as he and the accused did not have a prior altercation. After Entac was hacked, he simply fell to the ground and died instantly, his head almost severed.

5. **ID.; ID.; EVIDENT PREMEDITATION; REQUISITES; NOT PROVEN IN CASE AT BAR.**— The crime was not, however, attended by the aggravating circumstance of evident premeditation. There is evident premeditation when the following facts are proved: (1) the time when the accused decided

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to commit the crime; (2) an overt act showing that the accused clung to his determination to commit the crime; and (3) the lapse of a sufficient period of time between the decision and the execution of the crime, to allow the accused to reflect upon the consequences of his act. The records do not show evidence of these facts.

6. **ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES IN ORDER TO BE APPRECIATED IN FAVOR OF ACCUSED.**— Voluntary surrender cannot be appreciated in favor of the accused. This mitigating circumstance requires that (1) the offender was not actually arrested; (2) he surrendered himself to a person in authority or to an agent of that person; and (3) his surrender was voluntary. For the surrender to be voluntary, it should be spontaneous and indicative of the intent of the accused to submit himself unconditionally to the authorities, either because (1) he acknowledges his guilt or (2) he wishes to save the government the trouble and expense required by his search and capture. It is clear from the records, however, that the accused did not surrender to the police and was instead arrested after he was invited to the police station for investigation.

7. **CIVIL LAW; DAMAGES; AWARD OF CIVIL INDEMNITY, AFFIRMED; AWARD OF MORAL DAMAGES AND EXEMPLARY DAMAGES INCREASED IN LINE WITH EXISTING JURISPRUDENCE; TEMPERATE DAMAGES; AWARDED TO THE HEIRS OF VICTIM IN VIEW OF INSUFFICIENCY OF EVIDENCE OF THE EXPENSES INCURRED FOR VICTIM'S WAKE AND BURIAL.**— We affirm the trial court's award of ₱50,000.00 as civil indemnity. The award of moral damages is increased from ₱20,000.00 to ₱50,000.00 and of exemplary damages from ₱20,000.00 to ₱25,000.00 in line with existing jurisprudence. We likewise award the heirs of the victim ₱25,000.00 as temperate damages in view of the insufficiency of evidence of the expenses incurred by the victim's heirs for the victim's wake and burial.

APPEARANCES OF COUNSEL

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

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DECISION

PUNO, *J.*

Along with the festive close of the school year on March 21, 1996 came the gruesome end of Eulogio Entac's life. For his murder, an information was filed against the accused Tinampay on May 17, 1996, *viz*:

"That on or about 7:00 o'clock in the evening of March 21, 1996, at Sitio Calangag, Bonawon, Siaton, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously ATTACK, ASSAULT, and HACK one Eulogio Entac with the use of a long bolo, with which said accused was armed at that time, hitting the head of said Eulogio Entac, who died instantaneously as a result thereof, to the damage and prejudice of the heirs of the said victim."[1]

The evidence of the prosecution consists mainly of the testimony of eyewitness Porferio Tindoc, a farmer and resident of Sitio Calangag. At about 1:00 p.m. on March 21, 1996, Porferio and his twenty-seven-year old son Gregorio arrived in a school in Calangag where a closing program would be held. Porferio's daughter, thirteen-year old Maricel, had a part in the program. He brought with him a rooster. Since the program would start at 3:00 p.m., he and Gregorio proceeded to the cockpit about fifty meters away, but he (the accused) could not pair his rooster for a cock fight. So, they went back to the school at past 5:00 p.m. At about 7:00 p.m., he saw the accused Tinampay and Entac walking together near the school towards a gambling place. They had their arms on each other's shoulder. Tinampay held a two-and-a-half foot bolo with his right hand. Porferio was about five meters behind them. Tinampay looked back and saw him, then released his hold on Entac and held Porferio instead. When Tinampay and Porferio reached the front of the cockpit area, the former urged the latter to go farther with him. Porferio refused as it was dark. He was afraid that Tinampay would kill him as he knew his character. In

[1] Original Records, p. 1.

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1996, he stabbed Porferio's brother-in-law, Payling Jamosmos, while they were gambling and a case was filed in connection with the incident. Porferio told Tinampay that he preferred to stay in the gambling area because he wanted to gamble with his five pesos and bring home something for his family. Tinampay's hold on him tightened, so Porferio strove and succeeded to free himself from his hold. About an arm's length from Porferio, Entac was squatting in a corner, looking down on the *lomboy* leaf he was rolling into a cigarette. When Porferio broke free from Tinampay's hold, the latter took three steps forward and at a distance of one meter from Entac hacked the latter at the back of his neck with his bolo. He was almost beheaded and died instantly. Porferio saw the incident clearly as the place was illuminated by a *petromax* lamp. Tinampay then fled and stumbled because the place was hilly while Porferio helped bring the body of the victim to his residence, arriving there at about 8:00 p.m. He then went back to the school and fetched his daughter without finishing the program.[2]

The victim's widow, Arquila Entac, testified that she knows Tinampay because he is a relative of her husband. She had been married to Eulogio since 1973 and they had eight children. The eldest of the brood was twenty-three years old while the youngest was four years old. At about 11:00 p.m. on March 21, 1996, while home, she was informed by her cousin Pino Magsayo that her husband was coming home dead and that his assailant was the accused. The next day, she was also informed by her uncle, Porferio Tindoc, and the latter assured her that he would testify as he witnessed the killing. A policeman named Franco together with Barangay Captain Steven Orfanel also went to the Entac residence. They inquired if Arquila was Eulogio's wife, and asked her Eulogio's age, educational attainment and the wounds he sustained. Policeman Franco went upstairs where Eulogio's remains lay and checked the wounds. When the body was about to be brought to the chapel, it was placed in a makeshift coffin made by the Entacs' neighbors. Arquila

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[2] TSN, Porferio Tindoc, July 10, 1997, pp. 2-12; July 15, 1997, pp. 15-47.

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incurred expenses for the wake as she butchered two goats and served corn. On March 23, 1996, Eulogio was buried. He did not have a tomb and was given a poor man's burial at the cemetery. Arquila could not accept what happened to her husband as he was a good man and a good father.[3]

Dr. Mitylene Besario Tan took the witness stand. She had been the Municipal Health Officer of Siaton, Negros Oriental for nine years. The defense admitted her qualification as an expert witness. At about 8:00 in the morning on March 22, 1996, she was on duty at the Municipal Health Center of Siaton. A policeman named Franco informed her that on the night of March 21, 1996, Entac was hacked to death at *Sitio* Calangag. Since it was a far-flung *sitio* and she was doing monthly immunizations that day, she just gave the policeman authority to go to the *sitio* to confirm Entac's death. Policeman Franco did as told and upon returning, reported to Tan that Entac was beheaded and the corpse was already in *rigor mortis*.[4] Tan then made a certification dated March 22, 1996 stating that Entac was forty-two years old, a resident of Calangag, Bonawon, Siaton, Negros Oriental and that he was beheaded.[5] Three days later, she signed a Certificate of Death.[6]

SPO2 Franco Rubio corroborated the prosecution's story. At the time of his testimony, he had been in the service for seventeen years. On March 22, 1996, he was on duty. Pursuant to a report entered in their station's police blotter, Chief of Police Abelardo Osente ordered Rubio to investigate a killing in Sitio Calangag and to fetch a doctor to conduct an examination on the victim's body. Rubio, along with two other policemen, went to Dr. Mitylene Tan and invited her to go with them to examine Eulogio Entac's body. Dr. Tan declined as she had another appointment. Rubio then proceeded to the crime scene, but did not find the body there. He went to the Entac residence,

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[3] TSN, Arquila Entac, July 17, 1997, pp. 2-20.

[4] TSN, Mitylene B. Tan, July 15, 1997, pp. 2-15.

[5] Exhibit A, Original Records, p. 60.

[6] Exhibit B, Original Records, p. 7.

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about a kilometer away. He conducted an investigation and talked to the victim's wife and to Porferio Tindoc who was very near the Entac abode. Tindoc disclosed that the assailant was the accused. After his investigation, Franco went back to Dr. Tan and informed her that Entac was beheaded. He then proceeded to the Tinampay residence and invited the accused for investigation. Tinampay obliged and so they headed for the Siaton Police Station where he was turned over to SPO2 Regulo Guitalan for investigation.[7]

PO3 Clyde Quimat testified that he was on duty as an investigator and radio operator on March 22, 1996. As investigator, he was in charge of recording complaints and activities at the police station. He made Entry No. 1454 on page 738 of the police blotter which stated that policemen of the station led by SPO2 Rubio and PO2 Ricardo Macayan and PO2 Juanito Rado immediately proceeded to the place where the accused hacked Eulogio Entac the previous day or on March 21, 1996. Later, at about 3:00 p.m., the team returned to the station with Tinampay. SPO2 Rigulo Guitalan investigated Tinampay. Quimat made another entry in the police blotter stating that Rubio's team gathered from their investigation that the suspect was the accused and he waylaid the victim and hacked him at the back portion of his neck while the victim was on his way home from a dancing session.[8] Subsequently, on March 25, 1996, police from the station led by Quimat arrested Tinampay.[9]

The accused had a different story to tell. He identifies a certain Junior Turtal as the culprit. At about 7:00 p.m. on March 21, 1996, Tinampay was at the dance hall near the school in Sitio Calangag. A dance was being held at the close of the school year. He was a bit drunk but could recognize people. When he went out, he saw Porferio Tindoc, Eulogio Entac, and Dita Duran and some other unfamiliar people playing cards.

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[7] TSN, SPO2 Franco Rubio, July 29, 1997, pp. 3-28.

[8] Exhibit E, Original Records, p. 61-C.

[9] TSN, PO3 Clyde Quimat, July 29, 1997, pp. 29-34; July 30, 1997, pp. 2-10.

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Junior Turtal, Noe Janga, and Berber Anito were also there but they did not take part in the game. Entac was sitting on a stone, looking down, when Turtal hacked him once with a two-foot bolo he held with his right hand. He was hit at the back of the neck, his head was almost severed, and he fell on his back. He died instantly. Tinampay was about thirteen meters away from Turtal and a *petromax* lamp on the game table lighted the area. After the hacking, Turtal, along with Janga and Anito, fled. Although Tinampay already knew Turtal and his companions, he nevertheless ran after them to confirm their identities so that if called to testify, he would be able to identify them. But he did not pursue them in the dark as he was afraid he might also be hacked. Tinampay claims that the prosecution's eyewitness, Porferio Tindoc, did not see the hacking as he was looking down at the card game. When he (Tindoc) looked at Entac, the latter was already lying on the ground. He suggests that Tindoc testified against him because although they are friends, Tindoc has a grudge against him. He and Tindoc's brother-in-law, Payling Jamosmos, had a fight and the latter allegedly stabbed him, but he was able to ward it off and stab Jamosmos in the stomach. A case was not filed in relation to this incident but Tindoc maintained a grudge against him. Subsequently, the police invited Tinampay for investigation on the hacking of Entac, but he refused and insisted on his innocence, pointing instead to Turtal, Anito and Janga as the perpetrators. Eventually, however, he obliged and went with the police to the station. Later, when he was investigated by the Municipal Trial Court judge at Siaton, he did not file any counter-affidavit. Tinampay did not surrender, but was arrested for the hacking of Entac.[10]

The defense also presented Cresencio Quibo-Quibo. He was selling food inside the school premises on March 21, 1996 from 10:00 in the morning until about 6:00 in the evening. Tinampay went to his store at around 1:00 p.m. and left his bolo there. Quibo-Quibo presumed that he did so upon order of a *tanod* named Alfredo Tayko.[11]

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[10] TSN, Marciano Tinampay, October 16, 1997, pp. 2-9; October 17, 1997, pp. 2-22.

[11] TSN, Cresencio Quibo-Quibo, February 3, 2000, pp. 2-7.

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Alfredo Tayko corroborated Quibo-Quibo's testimony. He had been a *barangay tanod* of Siaton from 1992 up to the time he testified. On March 21, 1996, he was on duty at Sitio Calangag upon instruction of Barangay Captain Zaldy Villacampa. The latter was requested by a teacher to provide a *tanod* for the Calangag Elementary School's closing program. He announced to the visitors and parents in the school that all weapons should be deposited with him and retrieved before going home. The residents of the area were mostly farmers and normally brought along *bolos*.[12]

The trial court upheld the version of the prosecution and rendered a decision, the dispositive portion of which reads, *viz*:

"WHEREFORE, accused MARCIANO TINAMPAY is hereby found guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, and the Court hereby imposes upon him the penalty of *RECLUSION PERPETUA*. Accused is likewise directed to indemnify the heirs of victim Eulogio Entac the amount of FIFTY THOUSAND PESOS (₱50,000.00). The accused is likewise hereby adjudged to pay moral damages in the sum of TWENTY THOUSAND PESOS (₱20,000.00) and another amount of TWENTY THOUSAND PESOS (₱20,000.00) for exemplary damages."[13]

Hence, this appeal with the following assignment of errors, *viz*:

"I.

THE LOWER COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II.

THE LOWER COURT GRAVELY ERRED IN NOT GIVING CREDENCE AND WEIGHT TO THE ACCUSED-APPELLANT'S DEFENSE.

III.

ASSUMING SANS ADMITTING THAT IT WAS ACCUSED-APPELLANT WHO KILLED THE VICTIM, THE LOWER COURT

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[12] TSN, Alfredo Tayko, February 3, 2000, pp. 7-9.

[13] Original Records, p. 190.

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GRAVELY ERRED IN APPRECIATING AGAINST HIM THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

IV.

THE LOWER COURT GRAVELY ERRED IN NOT APPRECIATING IN FAVOR OF ACCUSED-APPELLANT THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER."[14]

The appeal is devoid of merit.

Time and again, we have ruled that the findings of a trial court on the credibility of witnesses deserve great weight as the trial judge has a clear advantage over the appellate magistrate in appreciating testimonial evidence. The trial judge is in the best position to assess the credibility of the witness as he had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination. Absent any showing that the trial court's calibration of credibility was flawed, we are bound by its assessment.[15] The trial court declared, *viz*:

"The Court finds the categorical, straightforward and credible assertion of prosecution's eyewitness Porferio Tindoc that it was accused Marciano Tinampay who suddenly hacked the unwary victim to his untimely death, worthy of belief. Although while on the witness stand Porferio made some minor inconsistencies on the time frame and some collateral matters, these appear mainly due to his lack of education and failure to fully comprehend the questions. On the material points, Porferio remained consistent and credible."[16]

Considering the trial court's assessment of Tindoc's credibility, it is of no moment that he was the lone eyewitness presented by the prosecution as the running case law is that ". . . the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a

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[14] *Rollo*, pp. 56-57.

[15] *People v. Pardua, et al.*, 360 SCRA 41 (2001), citing *People v. Mosqueda*, 313 SCRA 694 (1999).

[16] *Rollo*, pp. 29-30; Decision, pp. 6-7.

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straightforward manner."[17] We find no reason to disturb the trial court's assessment of Tindoc's testimony.

On the other hand, the accused's denial of responsibility for the crime and his version of the hacking incident deserve scant consideration. Well-settled is the rule that positive identification of the accused will prevail over the defense of denial.[18] Portions of his testimony confirm his incredulity. As pointed out by the trial court, it is incredulous that although Tinampay already knew Turtal, Anito and Janga before the hacking and he saw Turtal hack Entac, he still chased them after the hacking incident supposedly to ascertain their identities. Likewise, during the investigation of the crime, the accused did not submit a counter-affidavit despite the fact that he was allegedly not responsible for the hacking and he knew the real culprit.[19]

The accused's hacking of Entac was treacherous. There is treachery when the offender commits any of the crimes against persons, deliberately employing means, methods or forms of execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the victim might make.[20] "The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim."[21] There is no doubt that the attack on Entac was sudden and that the means employed ensured that he did not have an opportunity to defend himself. His head was bent down, looking at the *lomboy* leaf he was rolling. There was no forewarning of the impending attack as he and the accused did not have a prior altercation. After Entac was hacked, he simply fell to the ground and died instantly,

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[17] *People v. Tulop,* 289 SCRA 316 (1998).

[18] *People v. Mendoza,* 348 SCRA 318 (2000), citing *People v. Gallego,* 338 SCRA 21 (2000).

[19] *Rollo,* pp. 30-31; Decision, pp. 7-8.

[20] *People v. Perreras, et al.,* 362 SCRA 202 (2001), citing *People v. Amazan,* 349 SCRA 218 (2001); *People v. Bato,* 348 SCRA 253 (2000).

[21] *People v. Muerong,* 360 SCRA 566 (2001), citing *People v. Magno,* 322 SCRA 494 (2000).

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his head almost severed. The crime was not, however, attended by the aggravating circumstance of evident premeditation. There is evident premeditation when the following facts are proved: (1) the time when the accused decided to commit the crime; (2) an overt act showing that the accused clung to his determination to commit the crime; and (3) the lapse of a sufficient period of time between the decision and the execution of the crime, to allow the accused to reflect upon the consequences of his act.[22] The records do not show evidence of these facts.

Voluntary surrender cannot be appreciated in favor of the accused. This mitigating circumstance requires that (1) the offender was not actually arrested; (2) he surrendered himself to a person in authority or to an agent of that person; and (3) his surrender was voluntary.[23] For the surrender to be voluntary, it should be spontaneous and indicative of the intent of the accused to submit himself unconditionally to the authorities, either because (1) he acknowledges his guilt or (2) he wishes to save the government the trouble and expense required by his search and capture.[24] It is clear from the records, however, that the accused did not surrender to the police and was instead arrested after he was invited to the police station for investigation. We quote the relevant portion of the accused's testimony, *viz*:

"Q: According to police officer Clyde Quimat, on March 22 you were invited for investigation. When the police officers invited you for investigation, did you try to resist the invitation?

A: I refused the invitation of the police sir saying I was not the one who did the hacking.

Q: But you eventually went with them to the police station?

A: Because they brought me, sir, so I accompanied them to the police station. I was just even wearing shorts. I was not able to change my clothes.

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[22] *People v. Virtucio, Jr.*, 326 SCRA 198 (2000), citing *People v. Armando Sarabia*, 317 SCRA 684 (1999).

[23] *People v. Vital*, 341 SCRA 375 (2000).

[24] *People v. Abella, et al.*, 339 SCRA 129 (2000).

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Q: For clarification, were you arrested by the police authorities or you went with them of (*sic*) your own volition?

A: They went to me, Your Honor.

Q: Are you suggesting to the Court that you were arrested by the police authorities?

A: I was arrested without having committed the crime, Your Honor.

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Q: Is it not a fact that you were actually arrested on March 25, 1996 when there was already a warrant issued for your arrest by the Municipal Court of Siaton?

A: I was not shown a warrant, ma'am.

Q: But the fact is you were taken or the police officers of Siaton went to your residence twice on March 22 and March 25, 1996?

A: Only on the 22nd, ma'am. They only went on the 22nd.

Q: Now, while you were arrested, you knew that a case was already filed against you by reason of this incident?

A: I did not know about that, ma'am.

COURT:

Q: For clarification, when were you arrested by the police authorities of Siaton?

A: On March 22, Your Honor.

Q: Are you sure of that date?

A: Yes, Your Honor. On the 22nd I was apprehended, but I kept denying.

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Q: And it was the policemen of Siaton that effected the arrest?

A: Yes, Your Honor, Siaton policemen."[25]

PO3 Clyde Quimat also testified that the accused was arrested, *viz*:

"Q: Can you please read for the records the content of the entry which you made?

A: (Witness reading the entry.) 'Arrested person with warrant of arrest for Murder. One Marciano Tinampay y Lavestre, 52, married, farmer, resident of Sitio Balogo, Barangay Bonawon, Siaton, Negros Oriental and who was charged with murder before the Municipal Trial Court of Siaton, Negros Oriental in Criminal Case No. 5523 with no bail recommended, was arrested by the elements of this station led by PO3 Clyde Quimat on or about 2:40 p.m. today, 25 March 1996. Signed PO3 Clyde Quimat.'

Q: As stated in this entry, you were part of the team which arrested the accused, Marciano Tinampay. Where was the accused arrested?

A: On that day, we arrested Marciano Tinampay based on the warrant of arrest issued by Judge Fe Bustamante, at Barangay 3, more or less, half (½) kilometer from the station.

Q: Can you please tell us, if you know, how it happened to be that he was a kilometer away from the station when on March 22, he was brought to the police station by SPO3 Guitalan?

A: After I handed the Warrant of Arrest of Marciano Tinampay, I informed our chief investigator SPO2 Guitalan that this Marciano Tinampay is living near the station of Barangay 3 based on the information I received from my civilian agent.

Q: Prior to March 25, 1996, and after you saw Marciano Tinampay being entrusted by Franco Rubia (*sic*) to Chief Police Officer Guitalan, how many times have you seen him thereafter?

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[25] TSN, Marciano Tinampay, October 17, 1997, pp. 2 and 22.

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A: Aside from the 22nd March 1996, I still saw him on the 24th or March 26 in the station.

Q: Where was he placed in the station?

A: Still living outside.

Q: In effect, you are saying that there was no physical restraint of this person?

A: None, ma'am."[26]

Finally, we affirm the trial court's award of ₱50,000.00 as civil indemnity. The award of moral damages is increased from ₱20,000.00 to ₱50,000.00 and of exemplary damages from ₱20,000.00 to ₱25,000.00 in line with existing jurisprudence.[27] We likewise award the heirs of the victim ₱25,000.00 as temperate damages in view of the insufficiency of evidence of the expenses incurred by the victim's heirs for the victim's wake and burial.[28]

IN VIEW WHEREOF, the impugned decision is *AFFIRMED* with the *MODIFICATION* that the accused Tinampay is hereby adjudged to pay the heirs of the victim the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages and ₱25,000.00 as temperate damages. Costs against the accused-appellant.

SO ORDERED.

Panganiban and *Carpio Morales, JJ.*, concur.

Sandoval-Gutierrez and *Corona, JJ.*, on leave.

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[26] TSN, Clyde Quimat, July 30, 1997, pp. 7-8.

[27] *People v. Rubiso*, G.R. No. 128871, March 18, 2003, citing *People v. Catubig*, 363 SCRA 621 (2001) and *People v. Cueto*, G.R. No. 147764, January 16, 2003.

[28] *People v. Alfon*, G.R. No. 126028, March 14, 2003, citing *People v. Ronas*, 350 SCRA 663 (2001). See also *People v. Alcodia*, G.R. No. 134121, March 6, 2003, citing *People v. Catubig, supra.*