

399 Phil. 768

SECOND DIVISION

[G.R. No. 132330, November 28, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.SPO1
JOSE BANGCADO^[1] AND PO3 CESAR BANISA, ACCUSED-
APPELLANTS.**

D E C I S I O N

BELLOSILLO, J.:

SPO1 JOSE BANGCADO and PO3 CESAR BANISA appeal from the decision of the Regional Trial Court of Baguio City convicting them of two (2) counts of murder and two (2) counts of frustrated murder, imposing upon them the corresponding prison terms, and to pay damages plus costs.^[2]

The facts: On 27 June 1993, at around 8:30 in the evening, Pacson Cogasi, Julio Clemente, Leandro Adawan and Richard Lino were at the Skyview Restaurant, Magsaysay Avenue, Baguio City, drinking and listening to folksongs. Moments later, a group of five (5) arrived and sat one table away from Pacson Cogasi and his friends. Among the newcomers was a thin person wearing a blue long-sleeved jacket, later identified as SPO1 Jose Bangcado, and a heavier one wearing a t-shirt and *maong* pants, later identified as PO3 Cesar Banisa. The rest of their group were not identified.

At that time, members of the police force of Baguio City were conducting *Operation Kapkap* at the Skyview Restaurant. They however exempted the table of PO3 Cesar Banisa as they knew him to be a fellow policeman.

At around 9:00 o'clock that evening, Cogasi and his friends left the restaurant to go home. They were residents of La Trinidad, Benguet. As they went behind the restaurant where their Ford Fierra was parked, they noticed SPO1 Jose Bangcado and PO3 Cesar Banisa following them. Cogasi and his group recognized Bangcado and Banisa to be customers at Skyview Restaurant. Bangcado and Banisa approached them. First, Banisa asked Richard Lino for a light. Then Bangcado and Banisa asked the group if they were willing to be frisked. Since the two (2) police officers were armed with handguns and smelled of liquor, the group agreed to be frisked. As Leandro Adawan stepped aside to urinate, Bangcado slapped him and then asked the group where they came from. Their answer was, from Besao, Mt. Province, except Clemente who said that he came from Balili, La Trinidad. Bangcado, with Banisa standing guard behind him with a drawn gun, ordered Cogasi, Clemente, Adawan and Lino to form a line against the Ford Fierra facing him in that order. Adawan was only one meter away from Bangcado. Lino and Cogasi were about 1-¹/₂ meters away, while Clemente, four (4) meters away. Without any warning, Bangcado suddenly fired his gun in quick succession at the four (4) persons lined up against the Ford Fierra. Cogasi saw Adawan and Lino fall down. Cogasi then felt he was hit on the left side of his neck and he also fell down. He managed

however to crawl away and run to the Hilltop where he was able to ask for help before falling unconscious.

Cogasi woke up to find himself confined at the Baguio General Hospital together with Clemente. There Cogasi learned that Lino and Adawan died from gunshot wounds in their heads. Cogasi himself suffered a gunshot wound at the neck, at the junction of his left jaw near the ear, while Clemente received two (2) gunshot wounds on his right shoulder with one (1) of the bullets being lodged just below his right eye.

After their release from the hospital, Cogasi and Clemente filed a complaint with the NBI in Baguio City. On 8 July 1993, four (4) civilian males were presented to Cogasi for identification by the NBI, but he told them that the suspects were not among those present. Clemente did not participate in the identification process because of his eye injury.

In the morning of 10 July 1993 Bangcado and Banisa reported for their regular rank inspection at the La Trinidad Police Station. The policemen were told to remain in formation after the inspection. Cogasi went around the formation four (4) or five (5) times before pointing to Bangcado and then to Banisa. Clemente also went around the formation but despite going around longer than Cogasi, Clemente was unable to identify anybody. Clemente started to point to James Tagle but withdrew his identification of him when some people then present laughed and shouted "Hoy!" and "Sabali!" meaning "Wrong!" or "Different!" Accused-appellants insist that Clemente could not have made a reliable identification of them at the NBI and La Trinidad line ups, nor even in open court, because his eye injury blurred his vision.

The rule is that positive identification of witnesses prevails over the simple denial of the accused. It cannot be doubted that Clemente and Cogasi had a good view of the faces of the accused. From the testimonies of various witnesses, including PO3 Jimmy Baybay, one of the policemen who conducted *Operation Kapkap*, the Skyview Restaurant was well-lighted. Banisa himself testified that although the lighting may be "somewhat dim," he could still recognize a person from a distance of four (4) meters.^[3] This is relevant considering that the two (2) groups were seated only one (1) table apart. Thus, Cogasi and his friends were able to recognize their assailants as the persons who came out from the Skyview Restaurant.

The crime scene was illuminated by two (2) streetlights and the lights coming from the nearby Garden Inn and various sari-sari stores. The fact that the policemen who responded to the report of the incident had to use a flashlight in their investigation did not prove that the area was so dark as to preclude the identification of the persons involved. For one thing, the policemen had to be careful not to overlook any piece of evidence, such as a spent bullet. For another, SPO4 Antonio Naungayan of PNP Baguio City, who was part of the investigating team, testified on cross-examination that even if the area was not brightly lighted, one could still recognize people.^[4] According to Clemente, he was only four (4) meters away from his attackers when they fired upon him and his friends. Cogasi was only 1-1/2 meters away while Adawan and Lino, who died on the spot, were each only about a meter away.

It cannot be doubted that Cogasi and Clemente had enough time to take a good look at their assailants' faces who conversed with their victims, ordered them to fall in

line, frisked them one by one, and asked them questions before shooting them. When Bangcado and Banisa leaned over to frisk Cogasi and his friends, their faces must have only been inches away from their victims; and when they ordered their victims to line up against the vehicle, they stood only a few meters away.

Although Clemente admitted to be suffering from blurred vision, Cogasi's positive identification of appellants could be sufficient to establish their identities. Indeed, there is no law that requires that the testimony of a single witness must be corroborated except, of course, when expressly mandated. Witnesses are to be weighed, not numbered, in determining the credibility of witnesses and the value of each piece of evidence. In fact, the testimony of a single witness, if credible and positive, is sufficient to convict,^[5] and must be given full faith and credence when no reason to falsely testify is shown.^[6]

Assuming *arguendo* that Clemente was unable to identify accused-appellants during the line-up in La Trinidad as his right eye was still bandaged from his injuries, he was able to make a positive identification in open court. Neither is it material now that Clemente made some attempts to point to policeman James Tagle for it seems clear that he withdrew his identification. Besides, Clemente admitted candidly that he could not identify anyone in the line-up since his right eye was still covered with a bandage and was still suffering from blurred vision.

Further, the defense failed to shake Cogasi's certainty, either when he declared that he recognized accused-appellants as being those who were earlier in the Skyview Restaurant, or when he pointed to them in the line-up at La Trinidad. The fact that he took some five (5) minutes and had to go around the line-up four (4) or five (5) times did not detract from his credibility. Rather, it is to his credit that he took time to look closely into the faces of more than twenty-four (24) or so similarly garbed men to make sure that he did not make a mistake in identifying his assailants.

Neither should the defense attempt to mislead the Court by pointing out that Cogasi was not able to identify Bangcado during the NBI line-up since it is clear that that line-up did not include accused-appellants. Instead, it was composed of four (4) civilians, none of whom he had ever seen before. Since these four (4) had no connection with the crime, there was no reason for Cogasi to implicate any of them in the murder.

The defense also points out that the policemen who conducted *Operation Kapkap* indicated in their joint affidavit that they only saw Banisa present inside the Skyview Restaurant, along with three (3) unidentified companions. According to the defense, this only proves that Bangcado was not there since the policemen personally knew Bangcado and thus should have included him in their joint affidavit.

However, the theory of the trial court that the reason why they did not see Bangcado with Banisa was because he went to the washroom or elsewhere deserves credence. Considering that the Skyview Restaurant had some thirty (30) to fifty (50) customers that night; that the four (4) policemen were busy going around the tables conducting *Operation KapKap*; that they did not approach the table of Banisa to frisk him and his companions because they recognized him as a policeman, then it is evident that their attention was elsewhere, and that they did not bother to inquire whether Banisa had other fellow officers with him. Further, the policemen testified that they were in the restaurant for only a few minutes.

Further, PO Delfin Balan-eg, one of the policemen who conducted *Operation Kapkap*, testified that he saw Bangcado and Banisa drinking beer inside the restaurant. The defense tried to destroy his credibility by establishing that he and the two (2) victims as well as the two (2) complaining witnesses were related. However, it must be stressed, that relationship, much less bias, cannot be established by the fact that two (2) persons live in different barangays that form part of the same town.

The defense insist that neither could Cogasi's testimony be given any weight since his testimony in open court contradicted his sworn affidavit executed immediately after the incident before the investigating officer. While he testified that he saw the accused emerge from the Skyview Restaurant, in his affidavit, he swore that their attackers actually alighted from a red -colored car. The theory of the defense is that if the gunmen alighted from a red or maroon colored car immediately before the shooting, then they could not have come from the Skyview Restaurant, and vice versa.

An affidavit taken *ex parte* is judicially considered to be almost incomplete and often inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected circumstances necessary for his accurate recollection of the incident.^[7] Further, an examination of Cogasi's sworn statement shows, however, that there was actually no contradiction. His testimony was as follows: "x x x I noticed a maroon car x x x I noticed also two persons who were immediately following us went (sic) near the parked maroon car and one of them opened the door at the driver's side but immediately closed it."^[8] Quite obviously, the two (2) persons who emerged from the Skyview Restaurant intended to board the parked car but changed their minds and, instead, followed Cogasi and his friends to the Ford Fierra that was parked.

The accused-appellants raise the defense of alibi which is inherently weak. To prosper, alibi must be so convincing as to preclude any doubt that the accused could not have been physically present at the crime scene at the time of the incident.^[9] The alibis of the accused clearly show upon examination that this could not have been so.

Bangcado testified that he stayed at home because he served his tour of duty from 12:00 midnight to 8:00 a.m. the previous day. Thus, on the day of the incident, he was at home where he slept, read the newspapers, watched television and played with his one-year-and-seven-month old daughter. After dinner, he took a nap until his mother-in-law woke him up before 11:00 p.m. so he could report to the police station before 12:00 midnight. As police officer assigned to patrol his area of responsibility, his job was to ride in the police vehicle going around La Trinidad.^[10] This was confirmed by Bangcado's mother-in-law Angela Gondaes when she testified for the accused.

Yet, Bangcado himself told the court that Central Pico, La Trinidad, Benguet, where his mother-in-law's house stood, was only five (5) kilometers away from Skyview Restaurant and could be negotiated in thirty (30) minutes using a motor vehicle.^[11] The fact that La Trinidad was only thirty (30) minutes away from Baguio City was corroborated by Banisa himself.^[12] And Bangcado's house is near a national

highway where jeepneys pass by on their way to Baguio City, which means, it was not impossible for Bangcado to have left the house earlier than 11:00 p.m. and be in Baguio City at the time of the incident.

The defense failed to establish with credible evidence that SPO1 Jose Bangcado was on duty from 11:00 o'clock in the evening to 8:30 the following morning. SPO4 Lilia Pascual, Records Custodian of the PNP at La Trinidad, Benguet, testified that there was no record of the attendance of PNP officers from June to December 1993. SPO4 Carlos Layagan, Bangcado's Patrol Section Supervisor, testified that on that day, Bangcado was present for his regular tour of duty from 12:00 o'clock midnight to 8:00 o'clock the following morning and conducted routine patrol by mobile,^[13] but the incident occurred at around 9:00 o'clock in the evening according to the police who responded when the crime was reported to them. Thus, Bangcado had plenty of time to do what he did and still go on his tour of duty. More damaging was the admission of Layagan in his cross-examination that before 12:00 o'clock midnight of 27 June 1993 he was not in the company of SPO1 Jose Bangcado.^[14]

The alibi of PO3 Cesar Banisa was even more incredible. He admitted being at the Skyview Restaurant when Cogasi and his friends were there, but claimed that he left with his brother to eat *mami and siopao* at the Baguio First Hotel, which is only about a hundred (100) to a hundred and fifty (150) meters away from Skyview Restaurant and could be reached in five (5) minutes of walking.^[15] He explained however that "this bold admission x x x placing him within the vicinity of the crime scene shows his clear conscience. For, if he was involved in the crime, he would naturally put himself in other places."^[16] His testimony was corroborated by Abelardo Lucas who testified that he, along with Arsenio Palileng and Raymund Banisa, accused-appellant's brother, was with Banisa that night.

While flight of an accused is competent evidence to establish *prima facie* his guilt, there is no law or principle that non-flight *per se* is proof, let alone conclusive proof, of innocence. Much like the defense of alibi, non-flight cannot prevail against the weight of positive identification of the accused.^[17] It is more credible to believe that Banisa had no choice but to tell the truth regarding his presence at the Skyview Restaurant because four (4) policemen who knew him well saw him there while they were conducting *Operation Kapkap*.

PO3 Banisa further claims that his group stayed at the Baguio First Hotel Restaurant for only ten (10) minutes and then went down the road to the jeepney station where they boarded a jeepney at 9:00 o'clock in the evening bound for La Trinidad and got home after twenty-five (25) to thirty-five (35) minutes. Yet he also testified that the boarding station for jeepneys bound for La Trinidad was only across the road from Skyview Restaurant.

SPO1 Jose Bangcado and PO3 Cesar Banisa could have accosted their victims, gone back to Skyview Restaurant and joined their companions who may have thought that they (Bangcado and Banisa) just went to the comfort room or stepped out for some fresh air. Abelardo Lucas himself testified that while they were at the Skyview Restaurant his companions would frequently stand up and leave, purportedly to go to the restroom.

The defense bewails the fact that nothing seemed to have been done to the

deformed slug found near the body of the deceased Richard Lino, nor to the other slug extracted from Clemente, and that no ballistics examination was conducted to determine from what caliber they were fired and if the gun used was the same. Investigators did not even cause the surrender of accused-appellant's firearms for examination and comparison. Neither were accused-appellants required to undergo a paraffin test.

Nonetheless, a ballistics examination is not indispensable, and even if another weapon was in fact actually used in killing the victim, still the accused cannot escape criminal liability therefor as he was already positively identified.^[18] Because credible witnesses had already demonstrated accused-appellants' culpability, there was no need to present further evidence linking them to the crime. There is no requirement of a certain quantum of evidence before one may be justly convicted of an offense except when specifically required by law. The only requisite then is that the guilt of the accused is proved beyond reasonable doubt.^[19]

Accused-appellants insist that they had no motive to shoot the victims and/or the complaining witnesses. However, even the absence of a known motive, the time-honored rule is that motive is not essential to convict when there is no doubt as to the identity of the culprit.^[20] Lack of motive does not preclude conviction when the crime and the participation of the accused therein are definitely shown,^[21] particularly when we consider how nowadays, it is a matter of judicial knowledge that persons have killed or committed serious offense for no reason at all.^[22]

The defense also tried, but failed, to establish that Cogasi and Clemente knew beforehand that Bangcado and Banisa were policemen as they all lived and worked together in the same neighborhood. This allegation is not sufficient to prove that the witnesses for the prosecution had any ill motive to testify against accused-appellants. When there is no evidence to show any improper motive on the part of the prosecution witnesses to testify falsely against an accused or to falsely implicate him in the commission of a crime, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credit.^[23]

The defense also assails the conclusion reached by the trial court that the accused were guilty because they remained silent when they were pinpointed by Cogasi during the police line-up. The trial court asked, "Is it not that '*Qui tacen concentire videtur,*' meaning, 'Silence means consent?'"^[24]

Although the Rules of Court provides that an act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him,^[25] courts should be cautious in interpreting silence against the accused. Further, the facts do not support the conclusion that the accused remained silent. Both Bangcado and Banisa gave their individual reactions during the line-up but police discipline kept them from breaking rank.^[26] As police officers, they are bound by the strict discipline of their profession, as well as an awareness of their rights to remain silent and to avail of the services of counsel. These rights are not diminished by the fact that they are policemen.

However, the trial court ruled, and correctly so, that at the time of the police line-up, accused-appellants were not yet under the custody of the police agencies. Their rights had not yet been restricted or curtailed. The right to counsel attaches from the moment the investigation starts, i.e., when the investigating officer begins to ask questions to elicit information and confessions or admissions from the accused.

From the testimony of the victims as well as from the physical evidence, it seems that SPO1 Bangcado was the lone gunman, while PO3 Banisa merely stood behind him with his gun drawn. In his testimony, Cogasi narrated how the shooting occurred

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Q: You testified that the thin one who called himself Jose Bangcado pointed a gun at Leandro Adawan, what type of gun is (sic) that x x x x

A: It was black and short.

Q: What about the fat man at that time, was identified as Cesar Banisa, what was he doing at that time?

A: He was also standing beside him and was holding his gun.

Q: Would you illustrate to this Court how Jose Bangcado pointed a gun at Leandro Adawan?

A: *Witness stretch[ed] both his arms and clasped his hands together with the forefinger extended in front of him.*

Q: After you saw Jose Bangcado point a gun at Leandro Adawan, what else transpired, Mr. Witness?

A: He suddenly fired his gun.

Q: To whom Mr. Witness did he fire his gun?

A: He fired his gun to the four of us.

Q: After firing his gun what else transpired, Mr. Witness?

A: I just felt that I fell down.

Q: Why did you fall down?

A: Because I was shot.^[27]

On cross-examination, Cogasi affirmed his sworn statement taken by the investigating officer immediately after the incident wherein he referred to only one (1) gunman who did the shooting. He further testified that he heard four (4) successive shots when the gunman started shooting, then heard more shots only after he had succeeded in running away.

On his part, Clemente attested in his sworn statement that "the man in jacket then ordered us to line up. After we have formed a line, he started shooting at us starting from the left. He shot first Leandro, then Richard and followed by Pacson. After hearing the shots and seeing my companions fall, I turned my back and held my nape with my two (2) hands and started to run but I got hit and fell. I got up and tried to run but I fell down again."^[28]

On the other hand, during his direct examination Clemente testified -

Q: Now, Mr. Witness, when these two (2) persons followed you and your companions, what did you observe from them that time?

A: They have (sic) guns, sir.

Q: What kind of guns do (sic) they have?

A: Short and black, sir.

Q: And were they holding their guns?

A: They were holding their guns, sir x x x x

Q: After you were made to fall in line, what happened next?

A: He pointed a gun, sir.

Q: Who pointed the gun to whom?

A: The thin man pointed his gun at Leandro Adawan, sir.

Q: What else transpired after that?

A: They fired their guns at us, sir.

Q: Who shot at who (sic)?

A: The two (2) of them, sir, because there were two of them. [29]

On cross examination, Clemente testified -

Q: So, you said on that date you were frisked and then later on lined-up and when you heard successive shots, you fell down?

A: When I heard the three (3) successive shots, I saw one pointing the gun again at me, so, I turned around and prepared to run, but I was hit, sir. When I turned my back and started to run, I was hit, sir.

Q: So, because you turned your back, you did not really see who actually shot you?

A: I saw the thin one point the gun at me and both were armed with guns, sir x x x x

Q: So, you want to tell the court that it was the thin one who shot you because he was holding the gun that way, is that correct?

A: I do not know because both of them have (sic) guns, sir. But I saw the thin one pointing a gun at me, sir. [30]

Thus, as to the identity of the gunman, it is apparent that both witnesses were positive only as far as Bangcado was concerned. However, it seems that they only concluded that Banisa participated in the shooting because he was also holding a gun. The failure of the surviving victims to assert with confidence that Banisa also fired his gun raises reasonable doubt as to whether he participated in the shooting.

Accused-appellants deny the existence of treachery, nighttime and abuse of public position to aggravate the commission of the crimes. It is settled that qualifying circumstances cannot be presumed but must be established by clear and convincing evidence, as conclusively as the killing itself. [31] The defense alleges that there is no evidence that accused-appellants made some preparation to kill the victim in such a manner as to insure the execution of the crime or to make it impossible or hard for

the person attacked to defend himself. For treachery to be considered, two (2) elements must concur: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and, (b) the means of execution were deliberately or consciously adopted.^[32] In this case, treachery was not present. In a long line of cases, the Court held that "the essence of treachery is the swift and unexpected attack on an unarmed victim without the slightest provocation on his part."^[33]

To ensure that he was not in any risk, accused-appellant Bangcado frisked and searched Cogasi, Clemente, Adawan and Lino to see if they were concealing any weapons. After making sure that the victims were unarmed, Bangcado directed the victims to form a line against the Ford Fierra to separate the victims from each other and so that the latter could not rush to their friends' defense. Because Bangcado and Banisa were holding handguns, Cogasi and his friends did as they were told and were caught unaware when they were shot. In fact, Adawan and Lino died of gunshot wounds in the head, while Cogasi and Clemente only sustained head wounds that did not prove fatal.

In the absence of any previous plan or agreement to commit a crime, the criminal responsibility arising from different acts directed against one and the same person is individual and not collective, and that each of the participants is liable only for his own acts.^[34] Consequently, Banisa must be absolved from criminal responsibility for the assault on the victims. It is clear that neither the victims nor Banisa could have anticipated Bangcado's act of shooting the victims since the attack was sudden and without any reason or purpose. Thus, the criminal design of Bangcado had not yet been revealed prior to the killings.

For public position to be appreciated as an aggravating circumstance, the public official must use his influence, prestige and ascendancy which his office gives him in realizing his purpose. If the accused could have perpetrated the crime without occupying his position, then there is no abuse of public position.^[35] Hence, that aggravating circumstance cannot be appreciated here. While it may seem that accused-appellants intended to assert their authority as policemen and encourage in the victims' minds the belief that they were part of *Operation KapKap* when they frisked the victims, both Cogasi and Clemente testified that they never told the investigating officers that their assailants might be policemen. In fact, because the assailants were not in uniform, they believed the latter to be civilians.

The defense claims that the injuries of the surviving victims were not serious enough to classify the attack under the frustrated stage, therefore, they committed only attempted homicide. However, the doctors who attended to the surviving victims testified that had they not treated Cogasi and Clemente's injuries the latter would have suffered from infection which could result in their death. It is clear that only timely medical attention saved both victims from imminent death.

Accused-appellants deny that there was an offer to compromise when their relatives visited Miguel Adawan, the 81-year old father of Leandro Adawan. The old Adawan in tears testified that he came to know of the accused Bangcado and Banisa through their relatives when the latter came to his house in Besao, Mt. Province. Although the incident occurred on 27 June 1993, the first visit was sometime in April 1995 when Magdalena Mabiasan, the mother of Jose Banisa came "for a possible

settlement of the case."^[36] Again, sometime in August or September 1996, Bangcado's wife and parents, along with Banisa's mother Magdalena, visited him at Pico, La Trinidad.^[37]

The defense claims that the only reason the relatives of accused-appellant went to visit and talk to Miguel Adawan was to prevent him from avenging his son's death on the families of accused-appellant, in keeping with the tradition of the Igorot indigenous people. Therefore, this cannot be interpreted as an implied admission of guilt. Moreover, Sec. 27 of Rule 130^[38] contemplates an offer of compromise from the accused himself. There is no showing that the visits were made with the knowledge or upon the instructions of accused-appellants. Thus, even if the purpose of the visit was to negotiate a settlement, accused-appellants had nothing to do with it, since they were neither participants nor initiators.^[39]

The trial court believed in the testimony of Adawan, compared to that of the relatives of accused-appellants who could be biased, partial and, of course, hoping to save the two (2) accused from the serious predicament they were in.^[40] It posited this question:

But why is it that during the first time that they approached the 77-year old man Adawan in Besao, Mountain Province, they were already assured that the family of the deceased Adawan would not take revenge and for the last three years, nothing happened to the families of the accused, still they again went to the residence of Miguel Adawan at Pico, La Trinidad, Benguet. This would only show that they tried to amicably settle the cases, but they were rebuffed.^[41]

But an offer of compromise from an unauthorized person cannot amount to an admission of the party himself.^[42] Although the Court has held in some cases that an attempt of the parents of the accused to settle the case is an implied admission of guilt,^[43] we believe that the better rule is that for a compromise to amount to an implied admission of guilt, the accused should be present or at least had authorized the compromise.

In *People v. Macatana*^[44] it was held: "No implied admission can be drawn from the efforts to arrive at a settlement outside the courts, primarily because appellant did not take part in any of the negotiations. The efforts to settle the case x x x in accordance with the established Muslim practices, customs and traditions were initiated by acknowledged leaders x x x in an effort to prevent further deterioration of the relations between the tribes."^[45]

The general rule is that claims for actual damages should be supported by actual receipts. However, it is undisputed that the victims are members of the indigenous community and were buried according to their customs and traditions. The relatives of the victims attested that they incurred expenses for the cañao, the traditional gathering of Igorots. The Court is not unaware that the informal market system still governs the economic transactions of indigenous communities. Thus, receipts and other documents do not play a large role in their daily commercial transactions. In this case, wherein it is clearly established that the claimants were indeed members of indigenous communities, then the court should allow reasonable claims for expenses incurred in relation to traditional burial practices.

The heirs are also entitled to damages for the loss of earning capacity of the deceased Leandro Adawan. The fact that the prosecution did not present documentary evidence to support its claim for damages for loss of earning capacity of the deceased does not preclude recovery of the damages.^[46] Testimonial evidence is sufficient to establish a basis for which the court can make a fair and reasonable estimate of the damages for the loss of earning capacity.^[47] Moreover, in fixing the damages for loss of earning capacity of a deceased victim, the Court can consider the nature of its occupation, his educational attainment and the state of his health at the time of his death.^[48] The testimony of Adawan's father sufficiently established the basis for making such an award. It was shown that Adawan was thirty-seven (37) years old at the time of his death in 1993 and earned P4,000.00 a month as a mechanic.

Hence, in accordance with the *American Expectancy Table of Mortality* adopted by this Court in several cases,^[49] the loss of his earning capacity is to be calculated as follows:

Net Earning Capacity (x) = Life Expectancy x Gross annual income - living expenses (50% of gross annual income)

where life expectancy = $\frac{2}{3} \times (80 - \text{age of deceased [37 years]})$

x = $\frac{2}{3} \times (80 - 37) \times [(P4000.00 \times 12) - (P4000.00 \times 12)50\%]$

x = $\frac{2}{3} \times 43 \times [P48,000.00 - P24,000.00]$

x = $[\frac{2}{3} \times 43] \times P24,000.00$

x = $28.67 \times P24,000.00$

x = $P688,080.00$

Since Leandro Adawan was thirty-seven (37) years old at the time of his death, his life expectancy was 28.67 years. Considering that his average monthly income was P4,000.00, his gross annual income would be P48,000.00. Using the above formula, the victim's unearned income would thus be P688,080.00.

On the other hand, the Court has no basis to award damages for Richard Lino loss of earning capacity because the prosecution failed to introduce any evidence on this matter.

Civil indemnity in the amount of P50,000.00 (consistent with prevailing jurisprudence) is automatically granted to the offended party, or his/her heirs in case of the former's death, without need of further evidence other than the fact of the commission of any of the aforementioned crimes (murder, homicide, parricide and rape). Moral and exemplary damages may be separately granted in addition to indemnity. Moral damages can be awarded only upon sufficient proof that the complainant is entitled thereto in accordance with Art. 2217 of the Civil Code, while exemplary damages can be awarded if the crime is committed with one or more aggravating circumstances duly proved. The amounts thereof shall be at the

discretion of the courts.^[50]

Under present case law, the award of P50,000.00 for civil indemnity is mandatory upon the finding of the fact of murder. Moral damages, *vis-a-vis* compensatory damages or civil indemnity, are different from each other and should thus be awarded separately.^[51] Thus, as explained in *People v. Victor*,^[52] the indemnity authorized by our criminal law as civil liability *ex delicto* for the offended party, in the amount authorized by the prevailing judicial policy and aside from other established actual damages, is itself equivalent to actual or compensatory damages in civil law. It is not to be considered as moral damages thereunder, the latter being based on different jural foundations and assessed by the court in the exercise of sound discretion.^[53]

In *People v. Victor* the Court increased the civil indemnity for rape committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the present amended law, from P50,000.00 to P75,000.00. The Court held that "This is not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time, but also an expression of the displeasure of the Court over the incidence of heinous crimes against chastity."^[54] It is submitted that the heirs of victims of murder, which is also a heinous crime, should not receive less than what victims of rape receive as civil indemnity. If the civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of the offense, all the more reason should the same minimum amount be imposed on those convicted of murder, as more often than not the victims who are killed leave behind grieving families who are depended upon them for support. Thus, indemnity of P75,000.00 should therefore be reckoned for each count of murder committed by accused-appellant SPO1 Jose Bangcado.

Since the crime was committed on 27 June 1993, the penalty for murder prescribed by Art. 248 of the *Revised Penal Code*, prior to its amendment by RA 7659, which took effect only on 31 December 1993, should be applied in imposing the penalty for frustrated murder, i.e., *reclusion temporal* maximum to death.

The penalty for frustrated murder is one (1) degree lower than that prescribed by the Penal Code for the consummated offense, hence, the imposable penalty for frustrated murder should be *prision mayor* maximum to *reclusion temporal* medium. Applying the *Indeterminate Sentence Law*, and there being no mitigating nor aggravating circumstance present in the commission of the offense, the penalty to be imposed for the frustrated murder shall be taken from the range of *prision correccional* maximum to *prision mayor* medium or four (4) years two (2) months and one (1) day to ten (10) years as minimum, to the medium period of *prision mayor* maximum to *reclusion temporal* or twelve (12) years five (5) months and eleven (11) days to fourteen (14) years ten (10) months and twenty (20) days as maximum. Hence, an indeterminate prison term of eight (8) years two (2) months and ten (10) days of *prision mayor* medium as minimum to fourteen (14) years four (4) months and ten (10) days of *reclusion temporal* medium as maximum may be considered reasonable for the frustrated murder under the facts of this case.

WHEREFORE, the Decision of the court *a quo* in Crim. Cases Nos. 11619-R to 11622-R imposing *reclusion perpetua* for the two (2) counts of murder and the indeterminate prison term of *prision mayor* in its medium period to *reclusion*

temporal in its medium period for two (2) counts of frustrated murder on both accused-appellants SPO1 Jose Bangcado and PO3 Cesar Banisa is MODIFIED as follows:

1. In Crim. Case No. 11619-R, accused-appellant SPO1 Jose Bangcado is found GUILTY of murder under Art. 248 of the Revised Penal Code qualified by treachery, and is sentenced to *reclusion perpetua* and to pay the heirs of the victim Richard Lino P75,000.00 as indemnity for his death, P59,300.00 as actual damages, P200,000.00 as moral damages, and to pay the costs;
2. In Crim. Case No. 11620-R, accused-appellant SPO1 Jose Bangcado is found GUILTY of murder under Art. 248 of the Revised Penal Code, qualified by treachery, and is sentenced to *reclusion perpetua* and to pay the heirs of the victim Leandro Adawan P75,000.00 as indemnity for his death, P93,100.00 as actual damages, P200,000.00 as moral damages, and to pay the costs;
3. In Crim. Case No. 11621-R, accused-appellant SPO1 Jose Bangcado is found GUILTY of frustrated murder under Art. 248 in relation to Art. 6 of the Revised Penal Code. Applying the *Indeterminate Sentence Law*, and in the absence of modifying circumstances, he is sentenced to an indeterminate prison term of eight (8) years two (2) months and ten (10) days of *prision mayor* medium, as minimum, to fourteen (14) years four (4) months and ten (10) days *reclusion temporal* medium, as maximum, for the frustrated murder of the victim Julio Clemente, and pay him P100,000.00 as moral damages, and to pay the costs; and,
4. In Crim. Case No. 11622-R, accused-appellant SPO1 Jose Bangcado is found GUILTY of frustrated murder under Art. 248 in relation to Art. 6 of the Revised Penal Code. Applying the *Indeterminate Sentence Law*, and in the absence of modifying circumstances, he is sentenced to an indeterminate prison term of of eight (8) years two (2) months and ten (10) days of *prision mayor* medium, as minimum, to fourteen (14) years four (4) months and ten (10) days of *reclusion temporal* medium, as maximum, for the frustrated murder of Pacson Cogasi, and pay him P100,000.00 as moral damages, and to pay the costs.

There being no finding of conspiracy with accused-appellant SPO1 Jose Bangcado, PO3 Cesar Banisa is **ACQUITTED** of all the charges against him and, consequently, is ordered released from custody in connection with herein cases, unless he is held for other lawful causes.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Bangcado is also spelled "Bongcado" in the records; TSN, 18 March 1997, p. 3.

[2] Decision penned by Judge Joven F. Costales, Acting Presiding Judge, RTC-Br. 3, Baguio City, prom. 1 July 1997.

[3] TSN, 27 May 1997, p. 8.

- [4] TSN, 17 April 1996, p. 15.
- [5] *People v. Villalobos*, G.R. No. 71526, 27 May 1992, 209 SCRA 304, 315.
- [6] *People v. Silvestre*, G.R. No. 127573, 12 May 1999, 307 SCRA 68, 83.
- [7] *People v. Siguin*, G.R. No. 126517, 24 November 1998, 299 SCRA 124, 137, citing *People v. Marollano*, G.R. No. 105004, 24 July 1997, 276 SCRA 84.
- [8] Exh. "A."
- [9] *People v. Morin*, G.R. No. 101794, 24 February 1995, 241 SCRA 709, 715. See also *People v. Tabones*, G.R. No. 129695, 17 March 1999, 304 SCRA 781, 791.
- [10] TSN, 22 April 1997, p. 7.
- [11] TSN, 22 April 1997, pp. 48-49.
- [12] TSN, 27 May 1997, p. 15.
- [13] TSN, 26 May 1997, p. 5..
- [14] TSN, 26 May 1997, p. 10.
- [15] TSN, 27 May 1997, pp. 12-13.
- [16] *Rollo*, p. 186.
- [17] *People v. Gementiza*, G.R. No. 123151, 29 January 1998, 285 SCRA 478, 487.
- [18] See *People v. Belaro*, G.R. No. 99869, 26 May 1999, 307 SCRA 591.
- [19] *People v. Villanueva*, G.R. No. 122746, 29 January 1999, 302 SCRA 380, 399.
- [20] *People v. Villalobos*, G.R. No. 71526, 27 May 1992, 209 SCRA 304, 315.
- [21] *People v. Abigan*, No. L- 69674, 15 September 1986, 144 SCRA 132, 137.
- [22] *People v. Valdez*, G.R. No. 127663, 11 March 1999, 304 SCRA 611, 625, citing *People v. Cabundoc*, G.R. No. 118321, 15 October 1996, 263 SCRA 187, 199.
- [23] *Rollo*, p. 21.
- [24] *Rollo*, p. 128.
- [25] RULES OF COURT, Rule 130, Sec. 32.

- [26] TSN, 22 April 1997, pp. 26-27; and TSN, 27 May 1997, p. 3.
- [27] TSN, 17 Nov. 1993, p. 12.
- [28] Sworn statement of Julio Clemente, 12 July 1993.
- [29] TSN, 24 November 1993, p. 6.
- [30] TSN, 25 November 1993, p. 7-8.
- [31] *People v. Tabones*, G.R. No. 129695, 17 March 1999, 304 SCRA 781, 793.
- [32] *People v. Peñaflores*, G.R. No. 130550, 2 September 1999, 313 SCRA 563, 572.
- [33] *People v. Navarro*, G.R. No. 129566, 7 October 1998, 297 SCRA 331, 351.
- [34] *People v. Elijorde*, G.R. No. 126531, 21 April 1999, 306 SCRA 188, 197-98.
- [35] *People v. Joyno*, G.R. No. 123982, 15 March 1999, 304 SCRA 655, 670.
- [36] TSN, 21 January 1997, p. 14.
- [37] *Id.*, p. 15.
- [38] Rule 130, Sec. 27. Offer of compromise not admissible. x x x x In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt x x x x
- [39] TSN, 18 March 1997, p. 17.
- [40] *Rollo*, p. 129.
- [41] *Id.*
- [42] Wigmore, *RULE ON EVIDENCE*, Sec. 1061, p. 30.
- [43] *People v. Manzano*, No. L-38449, 25 November 1982, 118 SCRA 705; *People v. Manuel*, G.R. No. 92503, 8 July 1991, 198 SCRA 1818.
- [44] *People v. Macatana*, G.R. No. 57061, 9 May 1988, 161 SCRA 235, 244-245.
- [45] *Id.*, p. 244-45.
- [46] *People v. Verde*, G.R. No. 119077, 10 February 1999, 302 SCRA 690, 706, citing *Pantranco North Express, Inc. v. Baesa*, G.R. Nos. 79050-51, 14 November 1989, 179 SCRA 384, 394, 395.

[47] Pantranco North Express, Inc. v. Baesa, G.R. Nos. 79050-51, 14 November 1989, 179 SACRA 384, 394, 395.

[48] *Id.*

[49] See Sanitary Steam Laundry, Inc. v. Court of Appeals, G.R. No. 119092, 10 December 1998, 300 SCRA 20.

[50] See Note 17.

[51] *Id.*, p. 15.

[52] People v. Victor, G.R. No. 127903, 9 July 1998, 292 SCRA 186, 200.

[53] *Id.*, p. 200.

[54] *Id.*, p. 201.



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