



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 191759

Present:

PERLAS-BERNABE., J.,  
Chairperson,  
GESMUNDO,\*  
HERNANDO,  
INTING, and  
DELOS SANTOS JJ.

- versus -

Promulgated:

GERALD MORENO y TAZON,  
Accused-Appellant.

10.2 MAR 2020

x -----x

DECISION

**HERNANDO, J.:**

On appeal is the August 27, 2009 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 03204, affirming the Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 53, Manila in Criminal Case No. 01-197519 which found appellant Gerald Moreno y Tazon (appellant) guilty beyond reasonable doubt of the crime of Murder.

\* Per February 19, 2020 Raffle vice Associate Justice Andres B. Reyes, Jr. who recused due to prior participation in the Court of Appeals.

<sup>1</sup> Rollo, pp. 2-13; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Andres B. Reyes, Jr. (now a member of this Court) and Vicente S.E. Veloso.

<sup>2</sup> Records, pp. 223-233; penned by Judge Reynaldo A. Alhambra.

The Information<sup>3</sup> alleged:

That on or about the 16<sup>th</sup> day of November 2001, in the City of Manila, Philippines, said accused, did then and there, willfully, unlawfully and feloniously x x x at about 2:15 a.m., with intent to kill, with treachery and evident premeditation, attack, assault and use personal violence upon the person of one CECIL MIJARES Y LEOCADIO by then and there stabbing him with a bladed weapon on his body, thereby inflicting upon said CECIL MIJARES Y LEOCADIO mortal stab wounds at the back and chest which were the direct and immediate cause of his death, thereafter.

CONTRARY TO LAW.

*Version of the Prosecution*

On November 16, 2001, at around 2:15 in the morning, Adelriza Mijares (“**Adelriza**”) was awakened from her sleep when a hard object hit her head. When she turned on the lights, a man, wearing khaki shorts and white t-shirt, leap on their bed and repeatedly stabbed her husband, Cecil Mijares (“**Mijares**”), on the leg and chest. Mijares was able to kick the man out of the room and even close the door. Immediately thereafter, Mijares collapsed and fell on the floor. Adelriza shouted for help and their neighbor, Virgie Perey (“**Virgie**”), came to their rescue. Virgie sought assistance from their neighbors, Noli Corrales and Michael Buenaflor, in bringing Mijares to the Philippine General Hospital (PGH). Unfortunately, Mijares died while undergoing treatment.<sup>4</sup>

Senior Police Officer 1 Raul Olavario (“**SPO1 Olavario**”) and other police officers from the Western Police District, Homicide Division, arrived at the PGH after receiving a report about a stabbing incident in their area of jurisdiction. SPO1 Olavario interviewed Adelriza and conducted a physical examination of the cadaver. He observed multiple stab wounds on different parts of Mijares’ body, particularly at the front and at the back. After the examination, SPO1 Olavario asked Adelriza to accompany them to the crime scene. Upon arrival, the police officers discovered that four pieces of glass jalousies at the front window of Adelriza’s house were removed and the window screen was broken. They likewise saw bloodstains on the floor where Mijares collapsed.<sup>5</sup> The police officers and Adelriza proceeded to the police station where Adelriza executed a Sworn Statement<sup>6</sup> dated November 16, 2001. At this point, Adelriza still did not know the name of her husband’s killer but she vividly remembered his face after having witnessed the stabbing. A police cartographer prepared a sketch of the suspect based on Adelriza’s description.<sup>7</sup>

---

<sup>3</sup> Records, p. 1.

<sup>4</sup> Id. at 224, TSN, May 14, 2002, pp. 5-12.

<sup>5</sup> TSN, September 10, 2002, pp. 4-20.

<sup>6</sup> Records, pp. 11-16.

<sup>7</sup> Id. at 224.

In the afternoon of the same day, the police received a call from Virgie informing them that appellant, who fitted the description of the suspect, was in the vicinity of his house. According to Virgie, she heard rumors that appellant was responsible for the killing of Mijares.<sup>8</sup> Acting on Virgie's tip, SPO1 Olavario invited appellant to the police station for an interview regarding the killing that transpired to which appellant acceded.<sup>9</sup> The police officers then summoned Adelriza to the police station. Upon her arrival, she positively identified appellant as the person who stabbed her husband. It was only at this point that she learned of Moreno's name.<sup>10</sup>

SPO1 Olavario thus arrested appellant and informed him of his constitutional right to remain silent and to have a competent counsel of his choice. Appellant however did not respond. Hence, SPO1 Olavario merely asked for his name and then prepared the Crime Report, Booking and Arrest Sheet and Referral to Inquest.<sup>11</sup>

### *Version of the Defense*

The defense vehemently denied the version of the prosecution and interposed that at the time of the incident, appellant was sleeping at his house on Diamante St., Sta. Ana, Manila where his mother, father, siblings and son likewise lived. He was awakened by a loud noise and when he inquired about it from his father, he was told that there was a robbery in the vicinity. He then went out of their gate where their neighbor, Junior Santos, told him to get a taxicab. When it arrived, he assisted his neighbors to carry Mijares into the taxicab to be brought to the hospital. Thereafter, he went back to sleep and was only awakened at around 11:00 in the morning when armed police officers were already inside his room. The police officers invited him to the police station for an investigation and he voluntarily went with them.<sup>12</sup>

Appellant insisted that he never knew Mijares and he saw the victim for the first time when he assisted in carrying him to the taxicab. During the time of the incident, he was wearing a gray t-shirt and black pants contrary to Adelriza's description of the clothes of her husband's killer. However, he could not impute any reason as to why Adelriza would ever testify against him.<sup>13</sup>

---

<sup>8</sup> Id. at 18.

<sup>9</sup> Id. at 225.

<sup>10</sup> Id. at 224.

<sup>11</sup> Id. at 225; TSN, September 10, 2002, pp. 4-20.

<sup>12</sup> Id. at 227-228; TSN, December 2, 2003.

<sup>13</sup> Id.

Victoria Moreno (“**Victoria**”), appellant’s mother, and Crispulo Moreno III (“**Crispulo**”), his brother, corroborated appellant’s whereabouts.<sup>14</sup>

### **Ruling of the Regional Trial Court**

Appellant pleaded “not guilty.”<sup>15</sup> After trial, the RTC rendered a Decision<sup>16</sup> finding appellant guilty of Murder, treachery having attended the attack. The trial court disposed the case in this wise:

**WHEREFORE**, in view of the foregoing, judgment is hereby rendered finding accused Gerald Moreno y Tazon **GUILTY** beyond reasonable doubt of the crime of Murder and is hereby sentenced to **Reclusion Perpetua** and ordered to pay [the] heirs of Cecil Mijares the following amounts: **PHP75,000.00** as indemnity for his death; **PHP603,288.00** as unearned income; **PHP31,500.00** as actual damages; **PHP 50,000.00** as reimbursement for attorney’s fees; and **PHP50,000.00** as moral damages.

Cost against the accused.

SO ORDERED.<sup>17</sup>

The trial court rejected appellant’s defenses of *alibi* and denial; his alleged lack of motive in committing the crime; his arguments that the uncorroborated testimony of Adelriza was insufficient to convict him; and that his identification outside a police line-up was irregular. Ultimately, the RTC ratiocinated that the clear, positive and credible testimony of Adelriza that appellant was the culprit sufficiently removed any reasonable doubt on his guilt.

### **Ruling of the Court of Appeals**

Undeterred, appellant appealed his conviction before the CA.<sup>18</sup> The appellate court, finding no reversible error, upheld the trial court’s Decision. The CA held that the lone, positive and credible testimony of the eyewitness was sufficient to support appellant’s conviction.<sup>19</sup> Any inconsistencies in the testimony of Adelriza did not destroy the strength of her testimony. The appellate court stressed that there is no rule requiring for a police-line up in the identification of offenders and that the same is not indispensable for the proper and fair identification of offenders.<sup>20</sup> The CA also held that the defense of *alibi* cannot prevail over, and is worthless in the face of the positive identification by a credible witness. Moreover, appellant’s *alibi* was

<sup>14</sup> TSN, February 10, 2004, April 20, 2004, October 4, 2004, January 11, 2005, March 15, 2005.

<sup>15</sup> Records, pp. 46-47.

<sup>16</sup> Id. at 223-233.

<sup>17</sup> Id. at 233.

<sup>18</sup> Id. at 240.

<sup>19</sup> *Rollo*, pp. 7-8.

<sup>20</sup> Id. at 9.

inherently weak as he failed to prove that it was physically impossible for him to have been present at the scene of the crime. The appellate court disregarded the argument that he was illegally arrested because the objection was not raised before arraignment and was deemed waived. In sum, the CA did not depart from the trial court's ruling. The dispositive portion of the appellate court's Decision stated:

*WHEREFORE*, all the foregoing considered, the 25 August 2006 decision of the Regional Trial Court of Manila (Branch 53) in Criminal Case No. 01-197519 finding accused-appellant Gerald Tazon Moreno guilty beyond reasonable doubt of murder is *AFFIRMED*.

SO ORDERED.<sup>21</sup>

Aggrieved, appellant brought the case before Us, raising the same arguments he had at the CA.

### Issue

Appellant raised the sole error: The trial court has committed a serious reversible error when it pronounced the guilt of the appellant on the supposition that the quantum of proof constitutionally required to sustain a conviction was proven.<sup>22</sup>

### THE COURT'S RULING

The appeal has no merit.

*Positive testimony despite minor inconsistencies prevails over the defenses of denial and alibi*

Appellant claims that the trial court erred in ruling that the positive testimony of the prosecution's witness prevailed over his defense of *alibi*. He alleges that contrary to the conclusion of the trial court, his defense was not at all an *alibi* to account his whereabouts, rather it was an attestation of his plain denial of the crime charged.<sup>23</sup> He asserts that there were inconsistencies and inaccuracies in the uncorroborated testimony of the eyewitness that tarnished its veracity and diminished its probative value to prove his guilt.<sup>24</sup>

The arguments of the appellant deserve scant consideration.

---

<sup>21</sup> Id. at 12.

<sup>22</sup> Id. at 62.

<sup>23</sup> Id.

<sup>24</sup> Id. at 63-64.

Denial is inherently a weak defense which cannot outweigh positive testimony. A categorical statement that has the earmarks of truth prevails over a bare denial<sup>25</sup> which can easily be fabricated and is inherently unreliable.<sup>26</sup> For the defense of *alibi* to prosper, the accused must prove that he was at some other place at the time of the commission of the crime and it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. These requirements of time and place must be strictly met.<sup>27</sup>

Appellant asserts that he was asleep at the time of the commission of the crime. He insists that he has never met Mijares before and just saw him for the first time when he assisted in getting a taxicab so he may be rushed to the hospital. However, in the same breath, appellant himself admitted that only a wall separated his house and the crime scene.<sup>28</sup> Such admission negated physical impossibility of him being at the crime scene,<sup>29</sup> making his *alibi* simply unbelievable. While the testimonies of his mother, Victoria, and his brother, Crispulo, supposedly corroborated his claim that he was in a different place when the stabbing took place,<sup>30</sup> such testimonies did not bolster appellant's defenses of *alibi* and denial.

This Court has consistently assigned less probative weight to a defense of *alibi* when it is corroborated by relatives. For corroboration to be credible, the same must be offered preferably by disinterested witnesses.<sup>31</sup> Evidently, Victoria and Crispulo were not disinterested witnesses both being appellant's relatives. Their testimonies are rendered suspect because the former's relationship to them makes it likely that they would freely perjure themselves for his sake.<sup>32</sup> Hence, by all accounts, appellant failed to meet the requirements for his defense of *alibi* to prosper.

Concerning the supposed inconsistencies and contradictory statements in the eyewitness' testimony in open court,<sup>33</sup> this Court finds them immaterial and did not diminish appellant's guilt.

The inconsistencies in Adelriza's and SPO1 Olavario's testimonies on the number of persons present when she identified the appellant, Adelriza stated that the appellant was the only person present, while SPO1 Olavario maintained that there were other people present,<sup>34</sup> referred to a minor detail which did not diminish the probative value of the testimonies at issue. After all, it is well-settled that immaterial and insignificant details did not discredit

<sup>25</sup> *People v. Mat-an*, G.R. No. 215720, February 21, 2018, 856 SCRA 282, 295.

<sup>26</sup> *People v. Pulgo*, 813 Phil. 205, 219 (2017), citing *People v. Aquino*, 724 Phil. 739, 755 (2014).

<sup>27</sup> *People v. Aquino*, id. 754.

<sup>28</sup> Records, pp. 227-228; TSN, December 2, 2003.

<sup>29</sup> *Rollo*, p. 10.

<sup>30</sup> Records, pp. 228-229.

<sup>31</sup> Id.

<sup>32</sup> *People v. Nelmida*, 694 Phil. 529, 564-565 (2012).

<sup>33</sup> *Rollo*, pp. 65-68.

<sup>34</sup> Id. at 67.

a testimony on the very material and significant point bearing on the very act of the perpetrator. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness.<sup>35</sup> Here, it remains that Adelriza was able to categorically identify the appellant as the very culprit of the crime.

Moreover, courts cannot expect the testimonies of the witnesses to be impeccable.<sup>36</sup> In *People v. Givera*,<sup>37</sup> the Court explained that minor inconsistencies and discrepancies in the testimonies actually tend to strengthen the credibility of the witness because they discount the possibility of them being rehearsed, viz.:

In any event, these discrepancies are minor and insignificant and do not detract from the substance of her testimony. This Court has time and again said that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses. Instead of weakening their testimonies, such inconsistencies tend to strengthen their credibility because they discount the possibility of their being rehearsed testimony.<sup>38</sup> (Underscoring supplied)

Appellant also points out that his physical appearance varies from the description given by Adelriza of her husband's assailant. He argues that such contradictory observation proves the unreliability of Adelriza's testimony and provides reasonable doubt on his guilt.<sup>39</sup>

The arguments of appellant fail to impress Us.

This Court has consistently ruled that witnesses frequently concentrate on the facial features and movements of the accused. Victims of violence tend to strive to see the appearance of the perpetrators of the crime and observe the manner in which the crime is being committed and not unduly concentrate on extraneous factors and physical attributes unless they are striking.<sup>40</sup> The appellate court correctly pointed out that any difference between Adelriza's description of the victim's assailant and that of appellant's actual appearance, particularly as to height, was inconsequential because she cannot be expected to give an accurate estimate of his height. We thus adhere to the finding of the appellate court that Adelriza's immediate description of the assailant matched squarely with the actual appearance of appellant.<sup>41</sup>

<sup>35</sup> *People v. Mat-an*, supra note 25 at 295.

<sup>36</sup> *People v. Alviz*, 703 Phil. 58, 71-72 (2013).

<sup>37</sup> 402 Phil. 547 (2001).

<sup>38</sup> Id. at 565-566.

<sup>39</sup> *Rollo*, pp. 64-66.

<sup>40</sup> *People v. Aquino*, 385 Phil. 887, 904 (2000).

<sup>41</sup> *Rollo*, p. 8.

Ultimately, Adelriza's positive, categorical and consistent identification of the appellant as the perpetrator of the crime prevails over the rehashed defenses of denial and *alibi* by the appellant.

***Police line-up, conduct of arrest and rights of the accused in custodial investigations***

Appellant likewise questions the legality of his identification and arrest and the conduct of custodial investigation. He alleges that the procedure was irregular and that he was deprived of his constitutional right to have a counsel present.<sup>42</sup>

The arguments do not hold water.

A police line-up is not indispensable for the proper and fair identification of offenders. The important consideration is for the victim to positively declare that the persons charged were the malefactors.<sup>43</sup>

In *People v. Teehankee, Jr.*,<sup>44</sup> this Court explained the procedure for out-of-court identification and the test to determine the admissibility of such identifications in this manner:

Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru lineups where a witness identifies the suspect from a group of persons lined up for the purpose x x x. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances** test where they consider the following factors, *viz*[:] (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.<sup>45</sup>

Applying the totality of circumstances test, We find appellant's out-of-court identification to be reliable and thus admissible. To recall, Adelriza after being awakened when a hard object hit her head and after she switched on the lights inside the room, had a clear and direct view of the attack on her husband and the perpetrator. Moreover, she described with certainty the assailant to the police cartographer barely hours from the time of the incident, which

---

<sup>42</sup> *Id.* at 72-77.

<sup>43</sup> *Id.* at 9.

<sup>44</sup> 319 Phil. 128 (1995).

<sup>45</sup> *Id.* at 180.



description matched the facial features of the appellant, whom she subsequently identified as the assailant. In other words, the interval between the time she witnessed the crime and her identification of the appellant, was merely a matter of hours, leaving no room for her recollection to be tainted.

Verily, it was Adelriza's own description that led to the apprehension of the appellant. There was no evidence on record indicating any hint of a suggestion from the police officer who presented the appellant to Adelriza. Hence, the identification of the appellant as the culprit of the crime stands.

About the legality of appellant's arrest, it bears stressing that questions on arrest shall be made before arraignment and failure to object to the illegality of arrest constitutes a waiver on the part of the accused. It is settled that any objection to the manner of arrest must be opportunely raised before he enters his plea; otherwise, the objection is deemed waived.<sup>46</sup> Here, the records clearly show that the objection was only raised on appeal.<sup>47</sup>

The Court ruled in *People v. Kulais and Samson*:<sup>48</sup>

[A]ppellant is now estopped from questioning any defect in the manner of his arrest as he failed to move for the quashing of the information before the trial court. **Consequently, any irregularity attendant to his arrest was cured when he voluntarily submitted himself to the jurisdiction of the trial court by entering a plea of "not guilty" and by participating in the trial. x x x**<sup>49</sup> (Emphasis supplied)

Even assuming that appellant's arrest was irregular, still, it is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection.<sup>50</sup>

There was no violation of appellant's right to counsel during custodial investigation. The records show that appellant was informed of his constitutional rights when he was arrested. Since he chose to remain silent, he was not interrogated and no statement or evidence was extracted from him; neither was any evidence presented in court that was supposedly obtained from him during custodial investigation.<sup>51</sup>

### ***Crime committed and Proper indemnities***

We agree that treachery attended the attack on Mijares. There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself/herself

<sup>46</sup> *People v. Pepino*, 777 Phil. 29, 46-47 (2016), citing *People v. Trestiza*, 676 Phil. 420, 455 (2011).

<sup>47</sup> CA rollo, pp. 56-59.

<sup>48</sup> 313 Phil. 863 (1995).

<sup>49</sup> Id. at 869.

<sup>50</sup> *People v. Bringcula*, G.R. No. 226400, January 24, 2018.

<sup>51</sup> Rollo, pp. 11-12.

arising from the defense which the offended party might make.<sup>52</sup> In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution that would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender.<sup>53</sup> The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.<sup>54</sup>

Appellant's sudden attack on Mijares while asleep in his own home amply demonstrates treachery in the commission of the crime. Mijares had no inkling of the impending attack that night; or any peril to his person as he felt secured in his home. Mijares was not able to put up an effective defense. Although he kicked and pushed the appellant out of their room, this did not negate the presence of treachery. In *People v. Baltazar*,<sup>55</sup> We ruled that treachery must still be appreciated even if the victim was able to retaliate as a result of his reflexes, so long as he did not have the opportunity to repel the initial assault, *viz.*:

**Although appellant contends that there were defensive wounds on his arms, these do not show that the victim was able to put up an effective defense. This Court finds these wounds to be merely the result of a reflex action on the victim's part, in a vain attempt to avoid the thrusts of the knife.**

**Apropos to this is the case of *People v. Go-od*, where even the fact that a victim was able to stab one of his assailants was held as not negating the presence of treachery:**

**The fact that the victim was able to grab one of the bolos after he had already been hit and used the same to stab one of his assailants does not negate the presence of treachery in the commission of the crime. The characteristic and unmistakable manifestation of treachery is the deliberate and unexpected attack on the victim without any warning and without giving him the opportunity to defend or repel the initial assault, x x x**  
Ygot stabbed Nestor Go-od after he himself had already been wounded by the attack which as we have already mentioned was so sudden and unexpected that it did not give Aladino Ygot an opportunity to offer an effective defense nor to repel the initial attack.<sup>56</sup> (Emphasis Ours)

<sup>52</sup> Revised Penal Code, Article 14(16).

<sup>53</sup> *People v. Amora*, 748 Phil. 608, 621.(2014).

<sup>54</sup> *People v. Warriner*, 736 Phil. 425, 436 (2014).

<sup>55</sup> 455 Phil. 320 (2003).

<sup>56</sup> *Id.* at 333.

Further, We find that the appellant consciously and deliberately adopted the particular means, methods or form of attack in order to ensure the execution of the crime. He stabbed Mijares several times so that he would not be a risk to himself. He lodged a bladed weapon on the victim's chest and back.<sup>57</sup> Indeed, the attack on Mijares was treacherous thereby qualifying the killing to murder.

The RTC, as affirmed by the CA, awarded ₱75,000.00 as civil indemnity, ₱603,288.00 as unearned income, ₱31,500.00 as actual damages, ₱50,000.00 as reimbursement for attorney's fees, and ₱50,000.00 as moral damages.<sup>58</sup>

It is jurisprudentially settled that when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.<sup>59</sup>

In *People v. Jugueta*,<sup>60</sup> this Court held that for crimes like murder where the penalty imposed is *reclusion perpetua*, the nature and amount of damages that may be awarded are: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, among others.<sup>61</sup>

Pursuant to *Jugueta*, We sustain the award of ₱75,000.00 as civil indemnity but increase the moral damages from ₱50,000.00 to ₱75,000.00. In addition, an award of exemplary damages in the amount of ₱75,000.00 is proper.

However, in lieu of actual damages, We award temperate damages in the amount of ₱50,000.00. The settled rule is that when the amount of actual damages proven by receipts during the trial is less than the sum allowed by the court as temperate damages,<sup>62</sup> the award of temperate damages in lieu of actual damages, which is of a lesser amount, is justified. Conversely, if the amount of actual damages proven exceeds ₱50,000.00, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted. The rationale for this rule is that it would be anomalous and unfair for the victim's heirs, who tried and succeeded in presenting receipts and other evidence to prove actual damages, to receive an amount which is less than that given as temperate damages to those who were not able to present any evidence at all.<sup>63</sup>

---

<sup>57</sup> Records, p. 31.

<sup>58</sup> Id. at 233.

<sup>59</sup> *People v. Dadao*, 725 Phil. 298, 315-316 (2014).

<sup>60</sup> 783 Phil. 806 (2016).

<sup>61</sup> Id. at 848.

<sup>62</sup> Previous jurisprudence pegs the amount of ₱25,000.00 as temperate damages in murder cases. This amount was increased to ₱50,000.00 in the prevailing case of *People v. Jugueta* (supra note 60).

<sup>63</sup> *People v. Racal*, 817 Phil. 665, 685-686 (2017).

In the present case, Mijares' heirs were able to prove, and were awarded, actual damages in the amount of ₱31,500.00.<sup>64</sup> Since, prevailing jurisprudence now fixes the amount of ₱50,000.00 as temperate damages in cases where the penalty imposed is *reclusion perpetua*, this Court finds it proper to award temperate damages to Mijares' heirs, in lieu of actual damages.

Considering too that Mijares' heirs spent for attorney's fees to prosecute the case against the appellant, the award of ₱50,000.00 is sustained.<sup>65</sup> Article 2208 of the Civil Code<sup>66</sup> enumerates the legal grounds warranting the grant of attorney's fees and expenses of litigation, and this case qualifies since exemplary damages are awarded and the Court deems it just and equitable that attorney's fees be recovered.<sup>67</sup>

Anent unearned income, the RTC awarded ₱603,288.00 without elaborating on its basis. To determine the compensable amount of lost earnings, We consider (1) the number of years for which the victim would otherwise have lived (life expectancy); and (2) the rate of loss sustained by the heirs of the deceased. Life expectancy is computed by applying the formula  $(2/3 \times [80 - \text{age at death}])$  adopted in the American Expectancy Table of Mortality or the Actuarial Combined Experience Table of Mortality. The second factor is computed by multiplying the life expectancy by the net earnings of the deceased, *i.e.*, the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The net earning is ordinarily computed at fifty percent (50%) of the gross earnings. Thus, the formula used by this Court in computing loss of earning capacity is:  $\text{Net Earning Capacity} = [2/3 \times (80 - \text{age at time of death}) \times (\text{gross annual income} - \text{reasonable and necessary living expenses})]$ .<sup>68</sup>

Here, it was sufficiently established that the victim, at the time of his death, was 32 years old and was employed as a bookkeeper at the Philippine Amusement and Gaming Corp. with a monthly basic salary of ₱7,182.00 or ₱86,184.00 in a year.<sup>69</sup> We thus apply the formula for loss of income capacity in this wise:

<sup>64</sup> Records, p. 232.

<sup>65</sup> *Id.*

<sup>66</sup> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

<sup>67</sup> *Lim v. Tan*, 801 Phil. 13, 25 (2016).

<sup>68</sup> *National Power Corp. v. Heirs of Noble Casionan*, 592 Phil. 451, 465-467 (2008), citing *Lambert v. Heirs of Ray Castillon*, 492 Phil. 384, 392-393 (2005).

<sup>69</sup> Folder of Exhibits, Exh. "R."

$$\begin{aligned}\text{Net Earning Capacity} &= \text{life expectancy} \times [\text{gross annual income} - \\ &\text{living expenses}] \\ &= \frac{2}{3} [80 - \text{age of the victim at time of death}] \times [\text{gross annual income} - \\ &50\% \text{ of gross annual income}] \\ &= \frac{2}{3} [80 - 32 \text{ years}] \times [\text{P}86,184.00 - \text{P}43,092.00] \\ &= \frac{2(48)}{3} \times \text{P}43,092.00 \\ &= 32 \times \text{P}43,092.00 \\ &= \text{P}1,378,944.00\end{aligned}$$

We are thus impelled to modify the award of unearned income from to P603,288.00 to P1,378,944.00.


Finally, all damages awarded shall earn six percent (6%) interest per *annum* from the date of finality of this Decision until full payment.

**WHEREFORE**, the appeal is hereby **DISMISSED**. The August 27, 2009 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03204 finding appellant Gerald Moreno y Tazon guilty of Murder and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATIONS**, thus:


- 1) Moral damages is hereby increased from P50,000.00 to P75,000.00;
- 2) Unearned income due to loss of income capacity is hereby increased from P603,288.00 to P1,378,944.00;
- 3) Actual damages in the amount of P31,500.00 is deleted;
- 4) Temperate damages in the amount of P50,000.00 is awarded in lieu of actual damages;
- 5) Exemplary damages in the amount of P75,000.00 is likewise awarded.


All damages awarded shall then earn six percent (6%) interest per *annum* from the date of finality of this Decision until full payment.

**SO ORDERED.**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

**WE CONCUR:**

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson


  
**ALEXANDER G. GESMUNDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
Acting Chief Justice\*

---

\* Per Special Order No. 2775 dated February 27, 2020.