



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 227013

- versus -

Present:

ARIES REYES y HILARIO,
ARGIE REYES y HILARIO,
ARTHUR HILARIO, and
DEMETRIO SAHAGUN y
MANALILI,
Accused,

CARPIO, J., Chairperson
PERLAS-BERNABE,
CAGUIAO,
REYES J., Jr., and
LAZARO-JAVIER, JJ.

ARIES REYES y HILARIO and
DEMETRIO SAHAGUN y
MANALILI,
Accused-Appellants.

Promulgated:

17 JUN 2019

Handwritten signature: H. Cabalag Perfecto

x-----x

DECISION

LAZARO-JAVIER, J.:

The Case

This appeal¹ seeks to reverse and set aside the Decision² dated March

¹ CA rollo, pp. 133-135; filed under Section 13(c), Rule 124 of the Rules of Court.
² Rollo, pp. 2-14; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan.

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10, 2016 of the Court of Appeals in CA G.R. CR-HC No. 07105 entitled “The People of the Philippines, Plaintiff-Appellee, versus Aries Reyes y Hilario, Argie Reyes y Hilario, Arthur Hilario, and Demetrio Sahagun y Manalili, Accused, Aries Reyes y Hilario and Demetrio Sahagun y Manalili, Accused-Appellants,” for murder. Its dispositive portion reads:

WHEREFORE, the instant appeal is **DENIED**. The Decision dated August 27, 2014 of the Manila Regional Trial Court, Branch 3, in Criminal Case No. 08-259395 is hereby **AFFIRMED WITH MODIFICATIONS**, in that, the accused-appellants Aries H. Reyes and Demetrio M. Sahagun are found guilty beyond reasonable doubt of the crime of Murder, qualified by treachery. The payment for actual damages representing medical, funeral and burial expenses is reduced to **Php28,266.15**; moral damages is increased to **P75,000.00**; and exemplary damages is reduced to **P30,000.00**. All damages awarded shall likewise earn interest at the rate of **six percent (6%) per annum** from date of finality of this Decision until full payment thereof.

All other aspects of the assailed Decision STAND.

SO ORDERED.³ (Emphasis in the original)

The Charge

By Information⁴ dated November 28, 2007, Aries Reyes y Hilario and Demetrio Sahagun y Manalili, together with Argie Reyes y Hilario and Arthur Hilario were charged with murder for the death of Jun Balmores, viz:

That on or about August 5, 2007, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and with abuse of superior strength and evident premeditation, attack, assault and use personal violence upon the person of one JUN BALMORES Y ATUN, by then and there stabbing the latter on his right arm, hitting him with a plastic chair and a broom and stabbing him on his back, thereby inflicting upon the said JUN BALMORES Y ATUN stab wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.

Arraignment and Plea

On arraignment, Aries Reyes and Demetrio Sahagun pleaded “not guilty.”⁵ Their co-accused Argie Reyes and Arthur Hilario have remained at

³ *Id.* at 13.

⁴ Record, p. 1.

⁵ *Id.* at 138 and 71.

large.

During the trial, Catherine Balmores, Jonalyn Balmores, Fernando S. Dela Cruz, Mary Ann B. Nuñez, Dr. Bienvenido G. Torres and PO2 Joseph Y. Kabigting testified for the prosecution. On the other hand, appellants Aries Reyes and Demetrio Sahagun, Rizalinda Hilario, Jonjon De Leon and Rosalina Reyes testified for the defense.

The Prosecution's Version

The victim Jun Balmores, appellants Demetrio Sahagun and Aries Reyes, and accused Argie Reyes and Arthur Hilario were all vendors who sold their wares along the stretch of Hidalgo Street, Quiapo, Manila. On August 5, 2007, the police apprehended the illegal vendors in the area. Jun asked brothers Aries and Argie Reyes to allow his mother to leave her wares and vegetables in their stall. But the Reyes brothers refused. An argument then ensued between them and Jun.⁶

In the late afternoon, Jun and his wife Catherine packed up their wares and prepared to go home. But before leaving the area, Jun went back to Hidalgo Street for the shoulder bag he left earlier.⁷

When Aries, Demetrio, Arthur, and Argie saw Jun, they pursued him. As Jun tried to run away, Demetrio hit him with a plastic chair in the head, causing the former to fall to the ground. Arthur and Aries then alternately hit him with broomsticks. Jun, nonetheless, managed to get back on his feet and run toward Villalobos Street. But when he reached the corner of Villalobos Street, Argie was there waiting. Argie stabbed Jun in the left side of his body. Though wounded, Jun did not stop running. Shortly after, Argie caught up with him and stabbed him a second time, hitting him in the arm. Jun fell anew. Meantime, Arthur and Aries arrived. Before they could further hit Jun, Catherine stepped in and begged them to stop. The two desisted, albeit Arthur uttered "*Putang inang yan eh!*"⁸

Jun got rushed to the hospital where he was declared dead on arrival.⁹ The Medical and Autopsy Report¹⁰ revealed he died of "hypovolemic shock secondary to stab wound of the trunk."

The prosecution offered the following exhibits: Medical/Autopsy Report¹¹ (Exhibit "A"), Certificate of Death¹² (Exhibit "B"), Handwritten

⁶ TSN, September 2, 2008, pp. 4-7.

⁷ *Id.* at 7.

⁸ *Id.* at 8-10.

⁹ *Id.* at 10.

¹⁰ Record, p. 35.

¹¹ *Id.* at 35.

¹² *Id.* at 38.

Statement¹³ dated August 14, 2007 of Catherine Balmores (Exhibit “C”), Sworn Statement¹⁴ dated August 6, 2007 of Catherine Balmores (Exhibit “D”), Summary of Expenses¹⁵ (Exhibit “E”), Funeral and Burial receipts¹⁶ (Exhibit “F”), Receipts of medical and hospitalization expenses¹⁷ (Exhibit “G”), Sworn Statement of Jonalyn Balmores¹⁸ (Exhibit “H”), Sketch of the place of the incident¹⁹ (Exhibit “I”), Advance Information dated August 10, 2007 prepared by PO2 Joseph Y. Kabigting²⁰ (Exhibit “J”), Affidavit of Fernando Dela Cruz²¹ (Exhibit “K”), Medical Report²² (Exhibit “L”), Medico Legal Form²³ (Exhibit “M”), Certificate of Death of Jun Balmores²⁴ (Exhibit “N”), and Sworn Statement of Mary Ann Nuñez²⁵ (Exhibit “O”).

The Defense's Version

Appellants told a different story. According to them, when the stabbing incident took place, they were playing “*pusoy*” inside the Picache Building. The victim came and got into a heated argument with Argie. Jun brandished a small knife at Argie. They grappled for the knife until Argie succeeded in wresting it from Jun. The latter retreated but Argie gave chase. Argie caught up with and stabbed Jun. After Jun fell to the ground, Argie ran away. The incident had already ended when Aries, Demetrio, and Arthur arrived.²⁶

Before the incident, Rosalina Reyes, mother of the Reyes brothers, received threats from Jun's brothers regarding a space she bought from Demetrio.²⁷

The defense did not present any documentary evidence.

The Trial Court's Ruling

By Decision²⁸ dated August 27, 2014, the trial court found appellants guilty of murder, *viz*:

¹³ *Id.* at 4.

¹⁴ *Id.* at 307-308.

¹⁵ *Id.* at 94.

¹⁶ *Id.* at 90-92.

¹⁷ *Id.* at 83-89.

¹⁸ *Id.* at 7-8.

¹⁹ *Id.* at 102.

²⁰ *Id.* at 42-43.

²¹ *Id.* at 17-18.

²² *Id.* at 213.

²³ *Id.* at 214.

²⁴ *Id.* at 215.

²⁵ *Id.* at 198-199.

²⁶ TSN, October 16, 2012, pp. 6-13.

²⁷ TSN, October 24, 2013, pp. 5-13.

²⁸ *CA. rollo*, pp. 54-75; penned by Acting Presiding Judge Rosalyn D. Mislos-Loja.

WHEREFORE, the prosecution having established the guilt of accused Aries Reyes y Hilario and Demetrio Sahagun y Manalili beyond reasonable doubt, this Court finds both guilty of the crime of Murder, qualified by abuse of superior strength and aggravated by treachery, thereby sentencing them the penalty of reclusion perpetua, without eligibility for parole, and all its accessory penalties.

Considering that they are detention prisoners, the period of their detention must be credited in the service of their sentence.

Further, they are held solidarily liable to pay the heirs of the victim, Jun Balmores y Atun, the following amounts:

- (1) P75,000.00 as civil indemnity;
- (2) P32,799.65 as medical, funeral and burial expenses;
- (3) P500,000.00 as temperate damages, in lieu of loss of earning capacity;
- (4) P50,000.00 as moral damages; and
- (5) P35,000.00 by way of exemplary damages.

SO ORDERED.²⁹

The Proceedings before the Court of Appeals

On appeal, appellants faulted the trial court for: (1) convicting them of murder despite the prosecution's alleged failure to prove with moral certainty their complicity and conspiracy; (2) appreciating treachery and abuse of superior strength despite the clear evidence on record that Jun and the Reyes brothers had a misunderstanding prior to the stabbing incident; and (3) disregarding their defense of denial.


On the other hand, the Office of the Solicitor General (OSG) through Assistant Solicitor General Ellaine Rose A. Sanchez-Corro and State Solicitor Lucy L. Butler-Torres maintained that the prosecution was able to sufficiently prove that appellants and their co-accused conspired in killing the victim with treachery and abuse of superior strength.

The Court of Appeals' Ruling

In its assailed Decision³⁰ dated March 10, 2016, the Court of Appeals affirmed, with modification. It found that treachery attended the killing. As for abuse of superior strength, it ruled that the same was deemed absorbed in treachery. It further reduced the awards of actual and exemplary damages to P28,266.15 and P30,000.00, respectively; increased the award of moral

²⁹ *Id.* at 74.

³⁰ *Rollo*, pp. 2-14.



damages to P75,000.00; and imposed six percent interest per annum on these amounts, from finality of the decision until fully paid.

The Present Appeal

Appellants now seek affirmative relief from the Court and pray anew for a verdict of acquittal. In compliance with Resolution dated November 14, 2016, both appellants and the People manifested³¹ that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.

Issue

Did the Court of Appeals err in affirming appellants' conviction for murder?

Ruling

Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248³² of the Revised Penal Code; and (4) the killing is not parricide or infanticide.³³

The first and fourth elements – A person was killed and the killing is not parricide or infanticide


The presence of the first and fourth elements was undisputed. Jun Balmores was killed and the killing is not parricide or infanticide.

³¹ *Id.* at 23-24, and 28-29.

³² Article 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusión temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

³³ *Ramos v. People*, 803 Phil. 775, 783 (2017).



The second element – the accused killed the victim

Appellants assert they did not kill the victim. They point to Argie as the only one who stabbed the victim to death.

Fernando dela Cruz, a vendor in the area, testified in detail how appellants and their co-accused Argie Reyes and Arthur Hilario acted together in pursuing, hitting, and stabbing Jun Balmores to death, thus:

x x x x x x x x x

Q. While you were there in that place vending, was there any unusual incident that you can recall that happened?

A. I was shocked, sir because I saw them running after the other, sir.

Q. Who did you see running after the other?

A. I saw Pareng Demet, Aries, and Atoy, sir.

Q. And who was the person they are running after?

A. Jun Balmores, sir.

x x x x

Q. And what happened when you see these persons running after Jun Balmores?

A. Someone hit Jun Balmores with a chair, sir.

Q. Who hit Jun Balmores with a chair?

A. It was Demet, sir, Demetrio.

x x x x

Q. What happened to the man after he was hit with the chair by Demetrio Sahagun?

A. He fell on the ground, sir.

Q. And when Jun-Jun fell on the ground what happened next?

A. He was hit repeatedly, sir with a broom stick.

Q. Who hit Jun-Jun with a broom stick?

A. It was Aries and Atoy, sir.

Q. Now, after that what happened next?

A. Jun had the opportunity to run away, sir and the two were still after him.

Q. Who ran after Jun-Jun after he was hit by (a) broom stick? Who



again hit Jun-Jun with broom stick?

A. It was Aries and Atoy, sir.

x x x x

Q. So, after he was hit by broom stick by Atoy and Aries Reyes, what happened next?

A. He was met by a person named Argie, sir.

Q. When you said Argie, what is the relationship of Argie Reyes, the accused in this case?

A. They are the same person, sir.

Q. You said this Argie met Jun-Jun Balmores. Up to what direction Jun-Jun was going when he met Argie?

A. Going to Villalobos, sir.

Q. And what happened after this Argie Reyes met Jun-Jun Balmores while going to Villalobos?

A. He was stabbed, sir in the left side of his body, sir.

Q. Was he hit?

A. Yes, sir.

x x x x

Q. He said that he was hit at the left side of his body. What happened to Jun after he was hit on the left side of his body?

A. He still ran after Jun-Jun when he was running towards Mercury, sir.

Q. After that what else happened?

A. He was again stabbed, sir in his left arm.

Q. Who stabbed Jun Balmores?

A. Argie, sir.

x x x x

FISCAL:

Now, after Jun-Jun was stabbed the second time by Argie Reyes what happened next, Mr. Witness?

ATTY. COSTO:

The witness already answered.

A. "Nabagsak na po siya eh."

x x x x

Q. Ano nangyari, alam mo ba ano nangyari kay Jun-Jun nung dinala sa hospital?

A. We just waited in Quiapo as to Jun-Jun's condition and later on, sir we knew he was already dead.³⁴

Catherine Balmores,³⁵ Jonalyn Balmores,³⁶ and Mary Ann Nuñez³⁷ substantially corroborated Fernando's eyewitness account on all material points.

Based on the interlocking testimonies of the eyewitnesses, both the trial court and the Court of Appeals correctly ruled that appellants and their co-accused each took an active part in assaulting Jun Balmores. They in fact acted in concert toward one common purpose: to kill Jun Balmores. This is conspiracy. In conspiracy, the parties need not actually come together and agree in express terms to enter into and pursue a common design. It is enough that at the time of the commission of the offense, the accused or assailants had the same purpose and were united in its execution,³⁸ as in this case.

Thus, upon seeing Jun back on Hidalgo Street, appellants and their co-accused altogether pursued Jun. As Jun tried to run away, Demetrio hit him in the head, causing Jun to fall to the ground. Arthur and Aries then alternately hit Jun with broomstick handles. Jun managed to get back on his feet and run. When he reached the corner of Villalobos Street, Argie was there waiting. Argie then stabbed Jun in the left side part of his body. Though wounded, Jun did not stop running for his life. But Argie easily caught up with and stabbed Jun another time, hitting him in the arm. This caused Jun to fall anew and never again rose to his feet.

Per Dr. Bienvenido Torres' Medical/Autopsy Report,³⁹ Jun died of "hypovolemic shock secondary to stab wound of the trunk."⁴⁰ The fact that it was Argie alone who delivered the final *coup de grace* on the victim did not diminish appellants' shared culpability. In conspiracy, the act of one is the act of all.⁴¹

The third element – the presence of any of the qualifying circumstances under Article 248 of the Revised Penal Code

In the alternative, appellants argue that, if at all, they should be found guilty only of homicide, not murder. They vigorously claim that neither treachery nor abuse of superior strength was proved to have attended the victim's killing.⁴²

³⁴ TSN, November 23, 2010, pp. 10-23.

³⁵ TSN, September 2, 2008, pp. 8-11.

³⁶ TSN, February 10, 2009, pp. 14-16.

³⁷ TSN, November 24, 2011, pp. 7-10.

³⁸ See *People v. Nazareno*, 698 Phil. 187, 192 (2012).

³⁹ Record, p. 35.

⁴⁰ *Id.* at 213; CA *rollo*, p. 120.

⁴¹ *People v. Bi-ay*, 652 Phil. 386, 397 (2010).

⁴² CA *rollo*, p. 49.

The essence of treachery is the swift, deliberate, and unexpected manner by which the offense was committed, affording the victim no opportunity to resist, escape, much less, defend himself or herself.⁴³ The offender must have planned the mode of attack to ensure its execution without exposing himself to any danger which may come from the victim's act of retaliation or self-defense.⁴⁴

Here, although Jun and the Reyes brothers got into an argument in the morning of August 5, 2007, the same appeared to have ended several hours before the killing took place. In fact, according to Jun's wife Catherine, they had packed up their things and prepared to go home in the late afternoon of August 5, 2007. Jun, however, walked back to Hidalgo Street for the shoulder bag he left earlier.

There is no showing, as none was shown, that appellants and their co-accused knew Jun was going back to the area at that late time of the day and that they had planned to attack Jun there and then. On the contrary, appellants and their co-accused appeared to have spontaneously acted as soon as they saw Jun back in the area. They instantaneously pursued him, one hit him with a plastic chair in the head, two alternately whipped him with broomstick handles, one waylaid and stabbed him in the side of his body, and later, in his arm.

*People of the Philippines vs. Cañaveras*⁴⁵ ruled that treachery is not present when the killing is not premeditated or where the sudden attack is not preconceived and deliberately adopted, but is just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim, or when the killing is done at the spur of the moment.

Another point, even after Jun fell to the ground and appellants alternately hit him with broomstick handles, he still managed to get back on his feet and run for his life. And although Argie subsequently waylaid and stabbed him in the left side of his body, he did not stop running. The only time he did was when Argie caught up and stabbed him another time.

Evidently, although Jun did not expect the sudden and concerted attack of his assailants who were each armed with either a chair, broomstick handles, or a knife, he was not rendered totally defenseless or prevented from escaping his assailants. In fact, he was able to get back on his feet and run for his life, albeit in the end, he still lost his life due to the stab wound he sustained in his trunk.

In conclusion, the qualifying circumstance of treachery was not shown to have attended the killing of Jun Balmores.

⁴³ *People v. Sota*, G.R. No. 203121, November 29, 2017.

⁴⁴ *People v. Kalipayan*, G.R. No. 229829, January 22, 2018

⁴⁵ 722 Phil. 259, 270 (2013).

In another vein, We agree with the ruling of the Court of Appeals that abuse of superior strength, when absorbed in treachery, cannot be appreciated as a separate qualifying or aggravating circumstance.⁴⁶ It must be clarified though that this rule applies only when both circumstances concur. Thus, when treachery is absent, as in this case, abuse of superior strength may be appreciated as a distinct circumstance which may qualify the killing to murder.

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s and purposely selected or taken advantage of to facilitate the commission of the crime.⁴⁷ Evidence must show that the aggressor/s consciously sought the advantage, or their deliberate intent to use it.⁴⁸

No such evidence obtains in this case. Abuse of superior strength cannot be inferred, as the trial court erroneously did, simply from the fact that Jun was outnumbered four to one. Mere superiority in numbers is not indicative of the presence of abuse of superior strength.⁴⁹ Neither can the Court consider as evidence thereof the fact alone that appellants and their co-accused were each armed either with broomstick handles, plastic chair, or knife. As shown, there is no evidence that appellants and their companions planned the attack or purposely sought the advantage of superior strength by arming themselves to put the victim in such notorious disadvantage to ensure the commission of the crime.

In sum, there being no qualifying circumstance attendant to the killing of Jun Balmores, appellants may only be convicted of homicide⁵⁰ under Article 249 of the Revised Penal Code, viz:

Art. 249. Homicide. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

Penalty

Applying the indeterminate sentence law,⁵¹ appellants should be sentenced to eight years and one day of *prision mayor* as minimum to fourteen years, eight months and one day of *reclusion temporal* as maximum.

⁴⁶ *People v. Kalipayan*, G.R. No. 229829, January 22, 2018; *People v. Sota*, G.R. No. 203121, November 29, 2017.


⁴⁷ *People v. Villanueva*, 807 Phil. 245, 254 (2017)

⁴⁸ *People v. Beduya*, 641 Phil. 399, 411 (2010)

⁴⁹ *Id.*

⁵⁰ *People v. Magbuhos*, G.R. No. 227865, November 7, 2018.

⁵¹ *People v. Discalsota*, 430 Phil. 406, 419 (2002).



In accordance with prevailing jurisprudence,⁵² the heirs of Jun Balmores are entitled to civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00. Exemplary damages may not be awarded here since no aggravating circumstance was proved.

We affirm the award of ₱28,266.15 as actual damages for medical, funeral and burial expenses as the same were duly supported by receipts under Exhibits "F"⁵³ and "G."⁵⁴

On the alleged loss of earning capacity, there is no evidence on record to prove the actual extent thereof. What the record bears is Catherine's lone testimony that her late husband, in his lifetime, used to earn ₱2,000.00 a week as vendor; ₱1,500.00 a month for each of the six students who availed of his school service; and ₱700.00 per trip as part-time personal driver. Catherine's unsubstantiated testimony thereon is not sufficient, nay competent for the purpose of awarding actual damages for loss of earning capacity.⁵⁵

Be that as it may, temperate damages may be awarded where the earning capacity is clearly established but no evidence was presented to prove the actual income of the offended party or the victim.⁵⁶ Article 2224 of the Civil Code so provides, thus:

Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

Here, the Court of Appeals awarded ₱500,000.00 as temperate damages to the Heirs of Jun Balmores. But this amount appears to be in excess of the usual earnings of a typical vendor or tricycle driver in Quiapo, Manila.

In *Tan vs. OMC Carriers, Inc.*,⁵⁷ the Court held that the award of ₱300,000.00 as temperate damages to the heirs of a deceased tailor conformed with the usually known earnings of a tailor, viz:

According to the petitioners, prior to his death, Celedonio was a self-employed tailor who earned approximately ₱156,000.00 a year, or ₱13,000.00 a month. At the time of his death in 1995, the prevailing daily

⁵² *People v. Jugueta*, 783 Phil. 806, 846 (2016).

x x x x x x x x x

In other crimes that resulted in the death of a victim and the penalty consists of divisible penalties, like homicide, x x x the civil indemnity awarded to the heirs of the victim shall be ₱50,000.00 and ₱50,000.00 moral damages without exemplary damages being awarded. However, an award of ₱50,000.00 exemplary damages in a crime of homicide shall be added if there is an aggravating circumstance present that has been proven but not alleged in the information.

⁵³ Record, pp. 90-92.

⁵⁴ *Id.* at 83-89.

⁵⁵ *People v. Salahuddin*, 778 Phil. 529, 555 (2016).

⁵⁶ *Spouses Estrada v. Philippine Rabbit*, 831 SCRA 349, 376 (2017).

⁵⁷ 654 Phil. 443, 456-457 (2011).

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minimum wage was ₱145.00, or ₱3,770.00 per month, provided the wage earner had only one rest day per week. Even if we take judicial notice of the fact that a small tailoring shop normally does not issue receipts to its customers, and would probably not have any documentary evidence of the income it earns, Celedonio's alleged monthly income of ₱13,000.00 greatly exceeded the prevailing monthly minimum wage; thus, the exception set forth above does not apply.

In the past, we awarded temperate damages in lieu of actual damages for loss of earning capacity where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income.

In *Pleno v. Court of Appeals*, we sustained the award of temperate damages in the amount of ₱200,000.00 instead of actual damages for loss of earning capacity because the plaintiff's income was not sufficiently proven.

x x x

x x x

x x x

We adopt the same amount of ₱300,000.00 as temperate damages here. For this amount appears to approximate the earnings of Jun Balmores for his triple job as vendor, school service driver, and personal driver.

ACCORDINGLY, the appeal is **PARTLY GRANTED**, and the Decision dated March 10, 2016 of the Court of Appeals, **MODIFIED**.

Aries H. Reyes and Demetrio M. Sahagun are found guilty of homicide and sentenced to an indeterminate sentence of eight years and one day of *prision mayor*, as minimum, to fourteen years, eight months and one day of *reclusion temporal*, as maximum.

They are further ordered to jointly and severally pay the heirs of Jun Balmores ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱28,266.15 as actual damages for medical, funeral and burial expenses; and ₱300,000.00 as temperate damages, in lieu of actual damages for loss of earning capacity. These amounts shall earn a six percent interest per annum from finality of this decision until fully paid.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

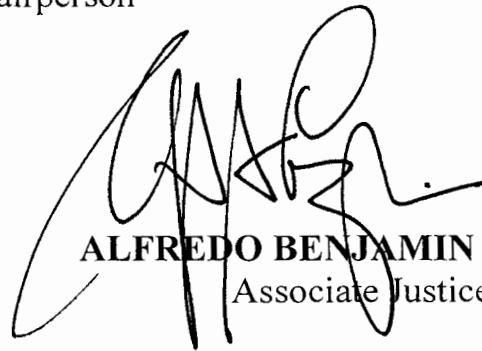
WE CONCUR:



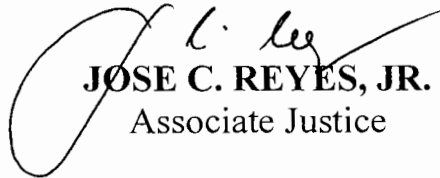
ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice

ATTESTATION

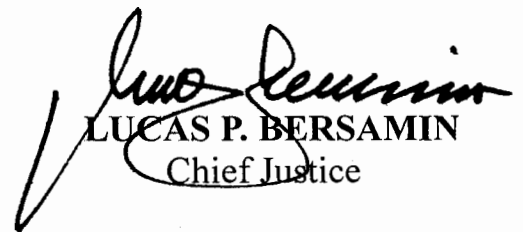
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the above Division Chairperson's Attestation, 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.



LUCAS P. BERSAMIN
Chief Justice