



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**EMERITU C. BARUT,**  
Petitioner,

**G.R. No. 167454**

Present:

- versus -

SERENO, C.J.,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
PEREZ, and  
PERLAS-BERNABE, JJ.

**PEOPLE OF THE PHILIPPINES,**  
Respondent.

Promulgated:

**SEP 24 2014**

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**DECISION**

**BERSAMIN, J.:**

Petitioner Emeritu C. Barut, a guard of the Philippine National Construction Corporation (PNCC), was tried for and found guilty of homicide by the Regional Trial Court, Branch 276, in Muntinlupa City under the judgment rendered on December 11, 2000, whereby he was sentenced to suffer the indeterminate penalty of imprisonment for 10 years and one day of *prision mayor*, as the minimum, to 17 years and eight months of *reclusion temporal*, as the maximum, and to indemnify the heirs of Vincent Ucag in the total amount of ₱250,000.00, inclusive of the actual and moral damages.<sup>1</sup> On appeal, the Court of Appeals (CA) affirmed the conviction of Barut through its decision promulgated on March 17, 2005.<sup>2</sup>

Hence, Barut now seeks the review of his conviction by petition for review on *certiorari*.

<sup>1</sup> *Rollo*, pp. 30-65; penned by Presiding Judge Norma C. Perello.

<sup>2</sup> *Id.* at 21-29; penned by Associate Justice Jose L. Sabio, Jr. (retired/deceased), with the concurrence of Associate Justice Noel G. Tijam and Associate Justice Mariflor P. Punzalan-Castillo.

### Antecedents

It appears that at around 6:00 o'clock in the afternoon of September 24, 1995 SPO4 Vicente Ucag was coming from a picnic in Laguna and returning home to Taguig, Metro Manila on board a passenger jeepney driven by his brother Rolando on the South Luzon Expressway. Ucag's wife and 16 year-old son Vincent were then riding an owner-type jeep driven by Rico Villas on the same route. When the latter vehicle exited at the Sucat Interchange ahead of Ucag's passenger jeepney, PNCC guards Conrado Ancheta and Barut stopped Villas and directed him to park his vehicle at the road side. After informing Villas that his vehicle had no headlights, Ancheta asked for his driving license, but it took a while before Villas produced the same apparently waiting for his companions in the passenger jeepney to arrive. Nonetheless, Villas ultimately surrendered his driving license, and Ancheta issued to him a traffic violation report (TVR) ticket. Right about then, the passenger jeepney carrying Ucag stopped where Villas' jeep had parked. Ucag and Danilo Fabiano, a co-passenger, alighted and approached Ancheta and Barut to inquire what the matter was. Apprised of the reason for the stoppage of Villas' jeep, Ucag requested the return of Villas' driving license. But Ancheta refused because he had already issued the TVR ticket. Ucag argued with Ancheta and Barut. Later on, however, Ucag turned around in order to avoid further argument, and simply told Villas to return for his driving license the next day. This apparently irked Ancheta, who dared Ucag to finish the issue right there and then. Ancheta suddenly pulled out his .38 caliber revolver and fired it several times, hitting Ucag on both thighs. Ucag fired back and hit Ancheta. Fabiano and Villas witnessed the exchange of gunshots between Ucag and Ancheta.<sup>3</sup>

Upon seeing the exchange of gunshots, Vincent Ucag rushed towards his father to go to his succor. Before Vincent could reach his father, however, Barut fired at Vincent in the chest. Vincent, badly bleeding, tried to go back to the owner-type jeep where his mother was, but fell to the ground before reaching the jeep. Vincent was rushed to the Parañaque Medical Center, where he expired while undergoing emergency surgery. His father was brought to the Camp Panopio Hospital in Quezon City for treatment and medical attendance.<sup>4</sup>

### Issues

In his petition for review on *certiorari*, Barut submits that:

(a) The CA misapprehended, overlooked or neglected facts that were favorable to him; and

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<sup>3</sup> Id. at 31-33.

<sup>4</sup> Id. at 34-35.

(b) The finding on the supposed consistency of the testimonies of the State's witnesses constituted a sweeping conclusion.

### **Ruling**

We find no reversible error committed by the CA.

To start with, the CA held that it could not find from its review of the records any compelling reason to set aside the factual findings of the trial court. It ruled that Villas and Fabiano had clearly and consistently testified that Barut had been the person who had shot Vincent; and that Barut's bare denial of firing at Vincent did not prevail over their positive and categorical identification of him as the perpetrator.

Although the record of the trial is laid bare and open during every appeal in a criminal case, the credibility of witnesses is a factual issue that the Court cannot disturb in this appeal.<sup>5</sup> We reiterate that the findings of fact by the trial court are accorded great respect especially when affirmed on appeal by the CA.<sup>6</sup> This great respect for such findings rests mainly on the trial judge's access to the witnesses while they testify in her presence, giving the trial judge the personal and direct observation of their manner and decorum during intensive grilling by the counsel for the accused, thereby enabling her to see if the witnesses were fidgeting and prevaricating, or were sincere and trustworthy.

Secondly, Barut adverts to the extra-judicial sworn statement that Villas gave at about 1:00 o'clock in the afternoon of September 25, 1995 – barely a day following the fatal shooting of Vincent – in which he declared not having seen Barut fire a gun. Barut contends that this declaration definitely contradicted Villas' court testimony on June 10, 1996, and manifested that he was "not clear and convincing because he never pointed out who [had] really shot Vincent Ucag."<sup>7</sup> Citing Villas' answer of "*Maybe he was hit*" to the question on direct examination: "*What was the reason if you know why he [referring to Vincent Ucag] was weak?*"<sup>8</sup> Barut insists that Villas was thereby ambiguous and gave rise to the doubt as "to who [had] really shot and killed the victim," whether it was Ancheta (who had traded shots with the victim's father), or himself.<sup>9</sup>

Noting that neither Ucag nor Ancheta had shot Vincent, the RTC explained that the former could not anymore fire his gun at Vincent not only because Vincent was his own son but also because he himself had already

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<sup>5</sup> *Bernardo v. Court of Appeals*, G.R. No. 101680, December 7, 1992, 216 SCRA 224, 232.

<sup>6</sup> *Castillo v. Court of Appeals*, G.R. No. 106472, August 7, 1996, 260 SCRA 374, 381.

<sup>7</sup> *Rollo*, p. 13.

<sup>8</sup> *Id.*

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

been lying on the ground after being hit in his lower extremities; and that Ancheta could not have fired at Vincent at all because he, too, had been already wounded and lying on the ground and profusely bleeding from his own gunshot wounds. The RTC further noted that the slug extracted from the body of Vincent had come from a .38 caliber revolver, not from Ucag's .45 caliber firearm.

Barut's contention did not itself go unnoticed by the CA, which observed that the RTC could not take the declaration of Villas into consideration because Villas' extra-judicial sworn statement containing the declaration had not been offered and admitted as evidence by either side. The CA stressed that only evidence that was formally offered and made part of the records could be considered; and that in any event, the supposed contradiction between the extra-judicial sworn statement and the court testimony should be resolved in favor of the latter.

The CA's negative treatment of the declaration contained in Villas' extra-judicial sworn statement was in accord with prevailing rules and jurisprudence. Pursuant to Section 34, Rule 132 of the *Rules of Court*, the RTC as the trial court could consider only the evidence that had been formally offered; towards that end, the offering party must specify the purpose for which the evidence was being offered. The rule would ensure the right of the adverse party to due process of law, for, otherwise, the adverse party would not be put in the position to timely object to the evidence, as well as to properly counter the impact of evidence not formally offered.<sup>10</sup> As stated in *Candido v. Court of Appeals*:<sup>11</sup>

It is settled that courts will only consider as evidence that which has been formally offered. x x x

A document, or any article for that matter, is not evidence when it is simply marked for identification; it must be formally offered, and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it. A formal offer is necessary since judges are required to base their findings of fact and judgment only—and strictly—upon the evidence offered by the parties at the trial. To allow a party to attach any document to his pleading and then expect the court to consider it as evidence may draw unwarranted consequences. The opposing party will be deprived of his chance to examine the document and object to its admissibility. The appellate court will have difficulty reviewing documents not previously scrutinized by the court below. The pertinent provisions of the Revised Rules of Court on the inclusion on appeal of documentary evidence or exhibits in the records cannot be stretched as to include such pleadings or documents not offered at the hearing of the case.

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<sup>10</sup> *Heirs of Emilio Santioque v. Heirs of Emilio Calma*, G.R. No. 160832, October 27, 2006, 505 SCRA 665, 683-684; *Pigao v. Rabanillo*, G.R. No. 150712, May 2, 2006, 488 SCRA 546, 557.

<sup>11</sup> G.R. No. 107493, February 1, 1996, 253 SCRA 78, 82-83.

The rule that only evidence formally offered before the trial court can be considered is relaxed where two requisites concur, namely: *one*, the evidence was duly identified by testimony duly recorded; and, *two*, the evidence was incorporated in the records of the case.<sup>12</sup> Furthermore, the rule has no application where the court takes judicial notice of adjudicative facts pursuant to Section 2,<sup>13</sup> Rule 129 of the *Rules of Court*; or where the court relies on judicial admissions or draws inferences from such judicial admissions within the context of Section 4,<sup>14</sup> Rule 129 of the *Rules of Court*; or where the trial court, in judging the demeanor of witnesses, determines their credibility even without the offer of the demeanor as evidence.<sup>15</sup>

The Court also sees fit to correct the indeterminate sentence of 10 years and one day of *prision mayor*, as the minimum, to 17 years and eight months of *reclusion temporal*, as the maximum, fixed by the RTC and affirmed by the CA. The maximum of 17 years and eight months comes from the maximum period of *reclusion temporal*, but the maximum of the indeterminate sentence should instead come from the medium period of *reclusion temporal*, whose duration is from 14 years, eight months and one day to 17 years and four months, because neither the RTC nor the CA had found the attendance of any aggravating circumstance. The minimum of the indeterminate sentence is fixed at 10 years of *prision mayor*, and the maximum of 17 years and eight months of *reclusion temporal* is modified to 17 years and four months of the medium period of *reclusion temporal*.

Anent the civil liability, the RTC granted ₱250,000.00 without specifying the amounts corresponding to actual and moral damages, as well as to the civil indemnity for the death of Vincent. The CA affirmed the grant. Both lower courts thereby erred on a matter of law. Actual and moral damages are different in nature and purpose. To start with, different laws govern their grant, with the amounts allowed as actual damages being dependent on proof of the loss to a degree of certainty, while the amounts allowed as moral damages being discretionary on the part of the court. Secondly, actual damages address the actual losses caused by the crime to the heirs of the victim; moral damages assuage the spiritual and emotional sufferings of the heirs of the victim of the crime. On the civil indemnity for death, law and jurisprudence have fixed the value to compensate for the loss of human life. Thirdly, actual damages may not be granted without evidence

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<sup>12</sup> *People v. Napat-a*, November 14, 1989, G.R. No. 84951, 179 SCRA 403, 407; *People v. Mate*, 103 SCRA 484 (1981); *Vda. de Oñate v. Court of Appeals*, G. R. No. 116149, November 23, 1995, 250 SCRA 283, 287.

<sup>13</sup> Section 2. *Judicial notice, when discretionary*. - A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. (1)

<sup>14</sup> Section 4. *Judicial admissions*. - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (2)

<sup>15</sup> Section 1, Rule 132 of the *Rules of Court* provides:

Section 1. *Examination to be done in open court*. - The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally. (1)

of actual loss; moral damages and death indemnity are always granted in homicide, it being assumed by the law that the loss of human life absolutely brings moral and spiritual losses as well as a definite loss. Moral damages and death indemnity require neither pleading nor evidence simply because death through crime always occasions moral sufferings on the part of the victim's heirs.<sup>16</sup> As the Court aptly said in one case,<sup>17</sup>

x x x a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them.

The death indemnity and moral damages are fixed at ₱75,000.00 each in view of homicide being a gross offense. Considering that the decisions of the lower courts contained no treatment of the actual damages, the Court is now not in any position to dwell on this. Nonetheless, the Court holds that despite the lack of such treatment, temperate damages of ₱25,000.00 should be allowed. Article 2224 of the *Civil Code* declares that temperate damages may be recovered when some pecuniary loss has been suffered but its amount cannot be proved with certainty. There is no longer any doubt that when actual damages for burial and related expenses are not substantiated with receipts, temperate damages of at least ₱25,000.00 are warranted, for it is certainly unfair to deny to the surviving heirs of the victim the compensation for such expenses as actual damages.<sup>18</sup> This is based on the sound reasoning that it would be anomalous that the heirs of the victim who tried and succeeded in proving actual damages of less than ₱25,000.00 would only be put in a worse situation than others who might have presented no receipts at all but would still be entitled to ₱25,000.00 as temperate damages.<sup>19</sup>

Also, in line with recent jurisprudence,<sup>20</sup> the interest fixed by the RTC is reduced to six percent (6%) *per annum* on all the items of civil liability computed from the date of the finality of this judgment until fully paid.

**WHEREFORE**, the Court **AFFIRMS** the conviction for homicide of petitioner **EMERITU BARUT**, subject to the **MODIFICATIONS** that: (a) his indeterminate sentence is from 10 years of *prision mayor*, as the minimum, to 17 years and four months of *reclusion temporal*, as the maximum; (b) he shall pay to the heirs of the late Vincent Ucag civil indemnity of ₱75,000.00 for his death; moral damages of ₱75,000.00; and

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<sup>16</sup> *People v. Osianas*, G.R. No. 182548, September 30, 2008, 567 SCRA 319, 339-340; *People v. Buduhan*, G.R. No. 178196, August 6, 2008, 561 SCRA 337, 367-368; *People v. Berondo, Jr.*, G.R. No. 177827, March 30, 2009, 582 SCRA 547, 554-555.

<sup>17</sup> *People v. Panado*, G.R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

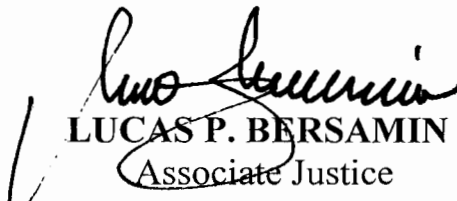
<sup>18</sup> *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 804-805.

<sup>19</sup> *Id.*

<sup>20</sup> *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.


temperate damages of ₱25,000.00, plus interest of six percent (6%) *per annum* on each of the items of damages hereby awarded from the date of finality of this judgment until fully paid; and (c) he shall pay the costs of suit.

**SO ORDERED.**



**LUCAS P. BERSAMIN**  
Associate Justice

**WE CONCUR:**



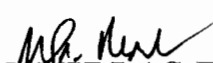
**MARIA LOURDES P. A. SERENO**  
Chief Justice



**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice



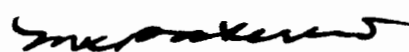
**JOSE PORTUGAL PEREZ**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
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.



**MARIA LOURDES P. A. SERENO**  
Chief Justice