



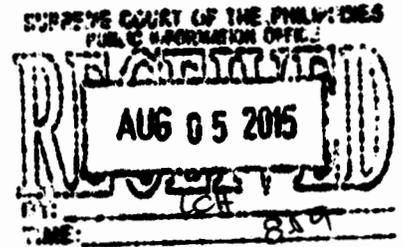
Republic of the Philippines

Supreme Court

Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated July 15, 2015, which reads as follows:*

**“G.R. No. 211161 (*People of the Philippines vs. Gerardo Dulcera y Coraños*). – The Court resolves to NOTE:**

- (1) the letter dated December 17, 2014 of Emerenciana M. Divina, Officer-in-Charge, Inmate Documents and Processing Division, Bureau of Corrections, Muntinlupa City, submitting the attached Death Report of prisoner Gerardo Dulcera y Coraños, who died on August 5, 2014 at the New Bilibid Prison Hospital, Muntinlupa City; and
- (2) the letter dated May 15, 2015 of Mr. Diosdado C. Samson, Chief Judicial Staff Officer, Judgment Division, Judicial Records Office, this Court, inquiring from this Court the status of the criminal and civil liability of appellant, considering that he died before the Resolution of July 30, 2014 (which dismissed the appeal and affirmed the assailed decision) attained its finality in order to avoid a recall/lifting of the entry of judgment, in view of the Resolution of this Court in G.R. No. 195694, entitled *Mercedita A. Relox vs. People of the Philippines, et al.*

On July 30, 2014, the Court rendered its Resolution<sup>1</sup> affirming the appealed decision of the Court of Appeals finding appellant Gerardo Dulcera y Coraños guilty beyond reasonable doubt of murder. The Court disposed as follows:

**IN VIEW OF THE FOREGOING**, the Court **ADOPTS** the findings and conclusions of law in the Decision dated June 28, 2013 of the Court of Appeals (CA) in CA-G.R. CEB-CR HC No. 00411 and **AFFIRMS** said Decision, finding appellant Gerardo Dulcera y Coraños guilty beyond reasonable doubt of the crime of murder, sentencing him to

<sup>1</sup> Rollo, p. 33.

suffer the penalty of *reclusion perpetua* and to pay the heirs of Clementa Bugho the amount of Php 30,000.00 as actual damages, Php 75,000.00 as civil indemnity, Php 75,000.00 as moral damages, and Php 30,000 as exemplary damages, with interest of six percent (6%) per annum on the awarded amount from the finality of the Court's Resolution until full payment.

**SO ORDERED.**

The Public Attorney's Office, counsel for appellant, received a copy of the adverted resolution on September 11, 2014, which would have thus rendered the resolution final and executory on September 26, 2014, if no motion for reconsideration was duly taken in the interim. However, in a letter<sup>2</sup> dated September 21, 2014, Police Superintendent I Roberto R. Rabo, Officer-in-Charge, New Bilibid Prison, informed the Court that appellant had died at the New Bilibid Prison Hospital in Muntinlupa City on August 5, 2014, as evidenced by a certified true copy of appellant's death certificate. The Court received the letter on September 24, 2014.

Under Article 89, paragraph 1 of the Revised Penal Code (RPC), the death of an accused pending his appeal extinguishes both his criminal and civil liability *ex delicto*. The provision reads:

Art. 89. How criminal liability is totally extinguished. – Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

The reason for the provision is that when the death of the accused supervenes pending appeal of his conviction, there is no longer a defendant to stand as the accused; the civil action instituted therein for the recovery of civil liability *ex delicto* is ipso facto extinguished, grounded as it is on the criminal action.<sup>3</sup>

Clearly, in this case, appellant's demise preceded the finality of the Court's July 30, 2014 Resolution. By force of Art. 89 of the RPC, his death extinguished his criminal liability, as well as the civil liability directly arising therefrom. Accordingly, the Court's Resolution dated July 30, 2014, though affirming appellant's conviction for murder, has been rendered ineffectual and the same must be set aside. The criminal case against appellant must also be dismissed by reason of his death.

<sup>2</sup> Id. at 34.

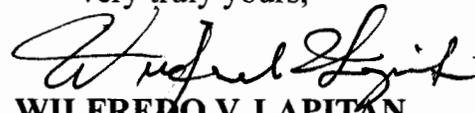
<sup>3</sup> *People v. Paras*, G.R. No. 192912, October 22, 2014.

July 15, 2015

**WHEREFORE**, the Court resolves to **SET ASIDE** its July 30, 2014 Resolution and **DISMISS** Criminal Case No. BN-02-07-3887 before the RTC of Burauen, Leyte, Branch 15, by reason of the death of appellant Gerardo Dulcera on August 5, 2014. (**Jardeleza, J.**, no part, due to his prior action as Solicitor General; **Bersamin, J.**, designated Additional Member per Special Order No. 2081 dated June 29, 2015; **Reyes, J.**, on leave; **Perez, J.**, designated Acting Member per Special Order No. 2084 dated June 29, 2015)

**SO ORDERED.”**

Very truly yours,

  
**WILFREDO V. LAPITAN**  
Division Clerk of Court  
7/27/15

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6000 Cebu City

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 15, Burauen  
6516 Leyte  
(Crim. Case No. BN-02-07-3887)

The Chief Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

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