

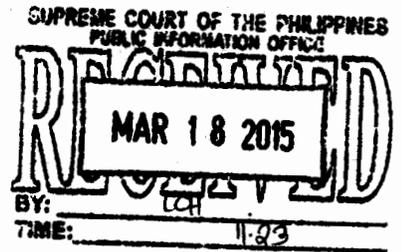


Republic of the Philippines

Supreme Court

Manila

THIRD DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated March 11, 2015, which reads as follows:

“G.R. No. 213595 (*People of the Philippines vs. Danilo Espino y Sagala*). – Considering the allegations, issues and arguments presented, the Court finds that the instant appeal fails to sufficiently show that the Court of Appeals committed any reversible error in its December 10, 2013 Decision¹ in CA-G.R. CR-H.C. No. 05607 as to warrant the exercise of the Court’s appellate jurisdiction except as to the award of moral damages.

Importantly, the key issues in this case are:

1. Whether the accused had the intent to kill Mira.
2. Whether the accused was properly identified by the prosecution witnesses.
3. Whether the killing of Mira was attended by treachery.

The issues must be answered affirmatively. Hence, the petition must be denied.

In his defense, the accused claims that he was the one who was attacked by the victim with several other companions and that it was the victim who was carrying a firearm. He further contends that when he struggled with the victim, the gun accidentally went off killing Mira. Thus, the accused argues that he had no criminal intent to kill Mira; he should, therefore, not be convicted of murder.

Clearly, the accused assails the factual findings of the trial court which the Court of Appeals affirmed. This is a factual issue which this Court, not being a trier of facts, shall not pass upon. As stated in *Development Bank of the Philippines v. Guarina Agricultural and Realty Development Corporation*:²

¹ *Rollo*, pp. 2-18.

² G.R. No. 160758, January 15, 2014, 713 SCRA 292, 304.

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x x x [C]onsidering that the CA thereby affirmed the factual findings of the RTC, the Court is bound to uphold such findings, for it is axiomatic that the trial court's factual findings as affirmed by the CA are binding on appeal due to the Court not being a trier of facts.

The accused also argues that his identification was improper as he was only identified by the witnesses after he was arrested. The accused contends that his identification was improper being marked with suggestiveness. In *People of the Philippines v. Sabangan*,³ the Court stated:

x x x [I]t is settled that an out-of-court identification does not necessarily foreclose the admissibility of an independent in-court identification and that, even assuming that an out-of-court identification was tainted with irregularity, the subsequent identification in court cured any flaw that may have attended it.

Thus, the CA aptly ruled that the accused was properly identified in open court and that any irregularity prior thereto had already been cured:

In the case at bar, although it appears in Rolando's affidavit that he specifically named appellant only after the latter was arrested, any irregularity, if any was cured by the subsequent positive identification in open court by Rolando pointing the appellant as the gunman who shot the victim. And as there is nothing to indicate that Rolando was impelled by improper motives to testify falsely against appellant, his positive declaration deserves full faith and credence.⁴

Finally, the accused contends that treachery was not present in the killing of Mira. Such contention is misplaced. The facts clearly show that Mira was shot by the accused when he had no expectation that he was about to be shot and was in no position to defend himself. On this point the CA correctly stated, citing the case of *People of the Philippines v. Dela Cruz*:⁵

The essence of treachery is that the attack is deliberate and without warning – done in a shift [sic] and unexpected manner, affording the hapless and unsuspecting victim no chance to resist or escape.

In the case at bar, a close scrutiny of the records disclose that the accused suddenly fired at Jonathan while the latter was avoiding confrontation and was in the process of moving back his motorcycle away from the accused. By the swiftness and deliberate nature of the attack, Jonathan was not able to resist, retaliate, or even evade the attack. Jonathan had no inkling that an attack was forthcoming and being unarmed, he had no opportunity at all to defend himself.⁶

The award for moral damages for the crime of murder in Criminal Case No. 10-0772, however, must be increased to PhP75,000.00 following

³ G.R. No. 191722, December 11, 2013, 712 SCR A 522, 548.

⁴ *Rollo*, p. 12.

⁵ G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747.

⁶ *Rollo*, p. 14.

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the Court's ruling in the cases of *People of the Philippines v. Warriner*⁷ and *People of the Philippines v. Villalba*.⁸

IN VIEW OF THE FOREGOING, the instant appeal is **DISMISSED**. The December 10, 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05607 is hereby **AFFIRMED** with **MODIFICATION**, such that the ruling of the trial court shall now read:

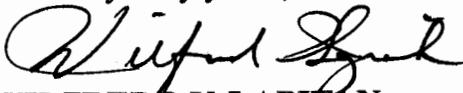
WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 10-0772 accused Danilo Espino y Sagala is found guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Art. 248 of the Revised Penal Code qualified by treachery and is hereby sentenced to Reclusion Perpetua and to pay the heirs of the victim Jonathan Mira the amount of PhP75,000.00 as civil indemnity, PhP75,000 as moral damages and PhP30,000.00 as exemplary damages.
2. In Criminal Case No. 10-0773, accused Danilo Espino y Sagala is found guilty beyond reasonable doubt of the crime of Attempted Homicide and sentenced to suffer the indeterminate penalty of imprisonment of six (6) months of arresto mayor as minimum to four (4) years and two (2) months of prision correctional, as maximum and to pay Marlon Cabansag the amount of PhP20,000 corresponding to the hospitalization expense as actual damages and PhP10,000.00 as moral damages.

(*Jardeleza, J., no part, due to prior action as Solicitor General; Leonen, J., Additional Member per Raffle dated September 3, 2014*)

SO ORDERED.”

Very truly yours,


WILFREDO V. LAPIHAN
Division Clerk of Court

3/16/15

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⁷ G.R. No. 208678, June 16, 2014.

⁸ G.R. No. 207629, October 22, 2014.

Mr. Danilo S. Espino
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New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

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

The Presiding Judge
REGIONAL TRIAL COURT
Branch 275, 1740 Las Piñas City
(Crim. Case Nos. 10-0772 to 73)

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