



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES  
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Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated July 8, 2020, which reads as follows:*

**“G.R. No. 228885 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. MARLON BATRINA, accused-appellant).** – This is an appeal from the Decision<sup>1</sup> dated November 10, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05915 which affirmed with modification the Joint Decision<sup>2</sup> dated February 13, 2012 of the Regional Trial Court (RTC) of Valenzuela City, Branch 171, finding Marlon Batrina (accused-appellant) guilty beyond reasonable doubt of Murder and Attempted Homicide.

The accused-appellant was formally charged with Frustrated Homicide and Murder as shown in two separate Informations:

**Criminal Case No. 773-V-03**

That on or about March 27, 2003 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause and with deliberate intent to kill, did then and there willfully, unlawfully, and feloniously stab one BRYAN M. DELA PAZ, hitting the latter on the left chest, thus performing all the acts of execution which would constitute the crime of Homicide as a consequence, but which nevertheless, did not produce it by reason or causes, independent of the will of the herein accused, that is, due to the timely, able and efficient medical attendance rendered to the victim at the Valenzuela General Hospital.

CONTRARY TO LAW.<sup>3</sup>

**Criminal Case No. 774-V-03**

That on or about March 27, 2003 in Valenzuela City, Metro Manila and within jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously and acting with treachery, with deliberate intent to kill, abuse of superior strength and evident

<sup>1</sup> Rollo, pp. 2-17; penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Noel G. Tijam (now a retired Member of this Court) and Francisco P. Acosta, concurring.

<sup>2</sup> CA rollo, pp. 38-50; rendered by Presiding Judge Maria Nena J. Santos.

<sup>3</sup> Id. at 67.

premeditation and without any justifiable cause stab on the stomach, chest and side of the body of one ROUSSEL K. FERRER, thereby causing his death.

CONTRARY TO LAW.<sup>4</sup>

The prosecution alleged that on March 27, 2003, at around 2 o'clock in the morning, the accused-appellant was having a drinking session with the victim Roussel Ferrer (Ferrer) and three others in an alley at Barangay Karuhatan, Valenzuela City. Meanwhile, Bryan Paul Dela Paz (Dela Paz) was buying bread from a nearby store when he was invited by the group to join them.<sup>5</sup> In the course of their drinking session, Dela Paz heard the accused-appellant ask Ferrer to speak with him in private. When Ferrer obliged, the two of them walked away with the accused-appellant's arm around Ferrer's shoulder. They proceeded to a corner in the alley.<sup>6</sup>

All of a sudden, Dela Paz heard Ferrer shout, "*Tama na, Kuya.*" Dela Paz saw Ferrer was already on his knees while clutching his bleeding stomach. When Dela Paz asked who stabbed him, Ferrer answered "*Kuya Marlon*". The accused-appellant moved towards them and told Dela Paz, "*Isa ka pa.*" He then pulled out a knife wrapped in a white towel from his back and stabbed Dela Paz on the chest. Still, Dela Paz was able to wrestle the knife from the accused-appellant's grasp. Thereafter, the accused-appellant ran away.<sup>7</sup>

With the assistance of the *Barangay Tanod*, Dela Paz and Ferrer were rushed to the Valenzuela General Hospital. Dela Paz was discharged later that same day. On March 28, 2003, Ferrer was transferred to the Jose Reyes Memorial Hospital where he underwent surgery. He stayed at the said hospital until he died on July 21, 2003.<sup>8</sup>

Per the medico-legal certificate, Ferrer sustained three stab wounds which injured his pancreas, stomach, and large intestines. The cause of Ferrer's death was "Septic Shock due to complication". Dr. Rodney D. Famero (Dr. Famero) testified that Ferrer's distal pancreas and spleen were removed through surgery. He stated that due to the severity of Ferrer's injuries, he could have died instantaneously.<sup>9</sup>

After the prosecution rested its case, the accused-appellant filed a demurrer to evidence without leave of court which was denied by the RTC. In effect, the accused-appellant waived his right to present evidence and had submitted the case for judgment on the basis of evidence for the prosecution, in

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<sup>4</sup> Id. at 68.

<sup>5</sup> Id. at 68-69.

<sup>6</sup> Id. at 69.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

accordance with Rule 119, Section 23, paragraph 2 of the Rules of Court. Nevertheless, the RTC required the parties to submit their respective memoranda.<sup>10</sup>

### The RTC Ruling

In a Joint Decision<sup>11</sup> dated February 13, 2012, the RTC found the accused-appellant guilty beyond reasonable doubt of the crimes of Attempted Homicide and Murder. The decretal portion of its ruling states:

WHEREFORE, premises considered, in [Criminal] Case No. 773-V-03, the Court finds the accused MARLON BATRINA GUILTY of Attempted Homicide and is hereby sentenced to suffer the penalty of two years and four months as minimum to four years two months and one day as maximum.

In [Criminal] Case No. 774-V-03, the Court hereby finds the accused MARLON BATRINA GUILTY beyond reasonable doubt of Murder. Consequently, he is sentenced to suffer the penalty of reclusion perpetua.

In addition, the accused is hereby ordered to pay the heirs of Roussel Ferrer the amount of ninety five thousand nine hundred forty five 90/100 (P95,945.90) as actual and compensatory damages, fifty thousand pesos (P50,000.00) as civil indemnity and fifty thousand pesos (P50,000.00) as moral damages.

It shall be understood that the sentence herein imposed will be successively served by the accused.

The period during which the accused was in preventive imprisonment shall be credited in his favor.

SO ORDERED.<sup>12</sup>

### The CA Ruling

The CA, through its Decision<sup>13</sup> dated November 10, 2015 affirmed the conviction of the accused-appellant for Murder and Attempted Homicide. Rejecting the accused-appellant's claim that the proximate cause of Ferrer's death was the latter's negligence in taking his prescribed medication, the CA explained that it was the accused-appellant's act of stabbing the victim in his vital parts that caused his death. The accused-appellant failed to take into consideration the testimony of Dr. Famero, who confirmed that the injuries sustained by Ferrer were serious in character. While Dr. Famero answered in his cross-examination that the wounds sustained by Ferrer may be cured in two

<sup>10</sup> Rollo, p.6.

<sup>11</sup> CA rollo, pp. 38-50.

<sup>12</sup> Id. at 49-50.

<sup>13</sup> Rollo, pp. 2-17.

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weeks, he clarified that there were also patients who died due to the gravity of their injuries.<sup>14</sup>

However, the CA modified the RTC ruling to include the imposition of legal interest on the damages awarded, thus:

WHEREFORE, in light of the foregoing premises, the instant APPEAL is hereby DENIED. Accordingly, the Joint Decision dated February 13, 2012 in Criminal Case No. 773-V-03 and Criminal Case No. 774-V-03, concerning accused-appellant Marlon Batrina's guilt beyond reasonable doubt for Attempted Homicide and Murder is hereby AFFIRMED, inclusive of the civil liabilities, with MODIFICATION through imposition as to interest at the legal rate of six percent (6%) per annum on all monetary awards from the date of finality of this Decision until fully paid.

SO ORDERED.<sup>15</sup> (Citation omitted)

Hence, this appeal before the Court.

### Issue

Whether the accused-appellant was correctly convicted of murder and attempted homicide

### The Court's Ruling

At the outset, it is well to reiterate the rule that "the findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand."<sup>16</sup> Thus, in the absence of any showing that the trial court's findings are tainted with arbitrariness, capriciousness or palpable error,<sup>17</sup> the Court will no longer recalibrate or evaluate the evidence already weighed and passed upon by the courts below.

### *Criminal Case No. 773-V-03 for Murder*

Murder is defined and penalized under Article 248 of the Revised Penal Code (RPC), as amended by Section 6 of Republic Act No. 7659, which provides:

<sup>14</sup> Id. at 9-10.

<sup>15</sup> Id. at 17.

<sup>16</sup> *People v. Gerola*, 813 Phil. 1055, 1063 (2017).

<sup>17</sup> *People v. Bontuyan*, 742 Phil. 788, 798 (2014).

ART. 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 *reclusion perpetua*, 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;

x x x x

To hold the accused-appellant liable for murder, the prosecution must prove that (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) the killing is neither parricide nor infanticide.<sup>18</sup> In the present case, the prosecution alleged that treachery attended the killing of Ferrer.

“In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.”<sup>19</sup>

Convicting the accused-appellant for the crime of murder, the trial court appreciated the qualifying circumstance of treachery based on its observation as follows:

The place where the [accused-appellant] executed the acts charged, the so-called scene of the crime— happened in an alley, in the compound of the accused during a drinking session participated in by the two (2) victims [Dela Paz and the deceased Roussel Ferrer], the accused, and three (3) other men who were relatives of the accused. There was “home advantage” so to speak. Had not one of the victims survived, not one of the three (3) men who were all relatives of the accused would be expected to tell on the accused.

From the testimony of [Dela Paz], the surviving victim, it would seem [Ferrer] who had no quarrel with the [accused-appellant] was clueless [that] the invitation of the accused to talk with him in an alley was a snare laid out for him [Ferrer]. The innocuous way the accused invited the deceased to talk, feigning friendship by surrounding his arms on the latter’s shoulder while going to a corner in the alley were disarming ploys consciously employed by the accused to put the deceased or anyone looking, off guard.

x x x x

That the [accused-appellant] bothered to wrap the butcher’s knife in a towel indicates planning and preparation. That the [accused-appellant] was

<sup>18</sup> *People v. Cirbeto*, 825 Phil. 793, 800 (2018).

<sup>19</sup> *People v. Las Piñas, et al.*, 739 Phil. 502, 524-525 (2014).

carrying it and even put this wrapped object at his back show premeditation of the treacherous design with which he intends to carry out the plan. That he inflicted three (3) fatal wounds on [Ferrer] which were all serious in character involving three of the victim's organs, the pancreas, the stomach and the large intestines manifests his intent to leave no life on his victim.<sup>20</sup>

However, "the presence of treachery cannot be presumed."<sup>21</sup> Notwithstanding the conclusion of the courts *a quo*, the Court is not persuaded that the prosecution had sufficiently proven that treachery attended the killing of Ferrer. There is nothing in the records which would tend to establish that the accused-appellant consciously and deliberately made preparations to attack the victim. Notably, the surviving witness, Dela Paz, did not see when and how the accused-appellant stabbed Ferrer since his attention was called only when Ferrer already cried for help. The Court has previously held that "when the witness did not see how the attack was carried out and cannot testify on how it began, the trial court cannot presume from the circumstances of the case that there was treachery."<sup>22</sup> That the attack was sudden and unexpected is not enough to qualify a killing into murder since "there must be a conscious and deliberate adoption of the mode of attack for a specific purpose."<sup>23</sup>

Also, it is highly speculative to infer that had Dela Paz not survived, no one would tell on the accused-appellant, which easily gave the accused-appellant advantage. It is well to remember that all elements of the crime as well as its qualifying circumstances, if any, must be proven beyond reasonable doubt. In this case, the finding of treachery was based on surmises and conjectures. Thus, the accused-appellant may only be convicted of homicide, not murder.

Besides, the Court takes notice that the qualifying circumstance of treachery was mentioned in the Information against the accused-appellant, but the particular acts and circumstances constituting treachery as an attendant circumstance were not averred therein.

In *People v. PO2 Valdez, et al.*,<sup>24</sup> the Court pronounced that there is an "actual need for the state to specifically aver the factual circumstances or particular acts that constitute the criminal conduct or that qualify or aggravate the liability for the crime in the interest of affording the accused sufficient notice to defend himself."<sup>25</sup> This same principle was applied in *People v. Dasmariñas*<sup>26</sup> and *People v. Delector*.<sup>27</sup> However, in other cases,<sup>28</sup> the Court

<sup>20</sup> CA rollo, pp. 44-45.

<sup>21</sup> *People v. Calinawan*, 805 Phil. 673, 683-684 (2017).

<sup>22</sup> *People v. Illescas*, 396 Phil. 200, 207 (2000).

<sup>23</sup> *People v. Antonio*, 390 Phil. 989, 1017 (2000).

<sup>24</sup> 703 Phil. 519 (2012).

<sup>25</sup> Id. at 525.

<sup>26</sup> 819 Phil. 357 (2017).

<sup>27</sup> 819 Phil. 310 (2017).

<sup>28</sup> *People v. Lab-ao*, 424 Phil. 482, 495 (2002); *People v. Opuran*, 409 Phil. 698, 710 (2004).

ruled that the allegation of treachery without any further explanation is sufficient since evidentiary facts need not be alleged in the information.

Settling these two divergent views, the Court held in *People v. Solar*<sup>29</sup> that it is insufficient to state in an information that the crime was committed with treachery without specifically describing therein the facts constituting such qualifying circumstance, *viz.* :

An information alleging that treachery exists, to be sufficient, must therefore have factual averments on how the person charged had deliberately employed means, methods or forms in the execution of the act that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make. The Information must so state such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged.<sup>30</sup>

Although in *Solar*, the Court maintained that issues regarding defects in the form or substance in the information must be timely raised by the accused either through a motion to quash or a motion for bill of particulars, otherwise, he waives his right to question such defect,<sup>31</sup> it does not escape the Court's attention that in this case, the actions of the accused-appellant manifesting treachery were not spelled out in the Information. It was not explained how the accused-appellant consciously and deliberately prepared his attack against Ferrer. While the lack of specificity in the Information *per se* does not result in the downgrading of the crime of murder to homicide, this detail, together with the prosecution's lack of evidence to prove treachery, substantiates the Court's conclusion that the accused-appellant should be convicted of homicide only.

Praying for his acquittal, the accused-appellant argues that Ferrer's death was caused by his own negligence in taking his prescribed medication for his injuries.<sup>32</sup> This is untenable. In *People v. Acuram*,<sup>33</sup> the Court held that "anyone inflicting injuries is responsible for all the consequences of his criminal act such as death that supervenes in consequence of the injuries. The fact that the injured did not receive proper medical attendance would not affect appellant's criminal responsibility."<sup>34</sup>

As regards the imposable penalty against the accused-appellant, Article 249 of the RPC provides that homicide is punishable by *reclusion temporal*. In view of the absence of any mitigating or aggravating circumstance, the penalty shall be imposed in its medium period, which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.<sup>35</sup> Under

<sup>29</sup> G.R. No. 225595, August 6, 2019.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> *CA rollo*, p. 32.

<sup>33</sup> 387 Phil. 142 (2000).

<sup>34</sup> Id. at 153.

<sup>35</sup> REVISED PENAL CODE, Article 76.

the Indeterminate Sentence Law (ISLAW), the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, if any, and the minimum shall be within the range of the penalty next lower in degree to be fixed in any of its periods.<sup>36</sup> The penalty next lower in degree is *prision mayor*. Hence, applying the ISLAW, the accused-appellant should be sentenced to an indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum for the crime of homicide.

As to the award of damages, the Court sustains the award of ₱95,945.90 as actual damages, ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages as the amounts are in accordance with *People v. Jugueta*.<sup>37</sup>

### ***Criminal Case No. 774-V-03 for Attempted Homicide***

Concerning the stabbing of Dela Paz, the accused-appellant was correctly convicted of attempted homicide instead of frustrated homicide. To constitute frustrated homicide, the following elements must be present:

- (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault;
- (2) the victim sustained fatal or mortal wound but did not die because of timely medical assistance; and
- (3) none of the qualifying circumstances for murder under Article 248 of the *Revised Penal Code*, as amended, is present.<sup>38</sup>

While Dela Paz sustained a stab wound on his chest which is indicative of the accused-appellant's intent to kill him, the second element is wanting since the prosecution was not able to present any evidence to prove that Dela Paz's wound was fatal in character, which would have caused his death without timely medical assistance.<sup>39</sup> Thus, the accused-appellant's conviction for Attempted Homicide stands.

Nevertheless, the indeterminate penalty of "two years and four months as minimum to four years two months and one day as maximum"<sup>40</sup> fixed by the RTC and upheld by the CA, is erroneous.

<sup>36</sup> ACT NO. 4103, Section 1, as amended by ACT NO. 4225.

<sup>37</sup> 783 Phil. 806 (2016).

<sup>38</sup> *De Guzman v. People*, 748 Phil. 452, 458 (2014).

<sup>39</sup> CA *rollo*, p. 49.

<sup>40</sup> *Id.*

The impossible penalty for attempted homicide is *prision correccional*, which is two degrees lower than *reclusion temporal*, the penalty for homicide.<sup>41</sup> Applying the ISLAW, there being no mitigating or aggravating circumstances in this case, the maximum of the sentence should be within the range of *prision correccional* in its medium period, which has a duration of two years, four months and one day to four years and two months. The minimum should be within the range of *arresto mayor*, which has a duration of one month and one day to six months. As can be seen, although the penalty imposed by the RTC as affirmed by the CA has a minimum and maximum term, the minimum term imposed does not fall within the range of *arresto mayor*. Also, the maximum of the sentence, “four years two months and one day,” exceeded the medium period of *prision correccional* by one day.

Accordingly, the indeterminate sentence to be imposed against the accused-appellant is six months of *arresto mayor*, as the minimum, to four (4) years and two (2) months of *prision correccional*, as the maximum.

Additionally, civil indemnity and moral damages in the amount of ₱20,000.00 each shall be imposed in conformity with *People v. Jugeta*.<sup>42</sup>

**WHEREFORE**, the Decision dated November 10, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05915 is **AFFIRMED** with the following **MODIFICATIONS**:

1. In Criminal Case No. 773-V-03, the Court finds the accused-appellant Marlon Batrina **GUILTY** beyond reasonable doubt of the crime of Homicide, and hereby sentences him to suffer an indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. He is **ORDERED to PAY** the heirs of Roussel Ferrer the amount of ₱95,945.90 as actual damages, ₱50,000.00 as moral damages, and ₱50,000.00 as civil indemnity.

2. In Criminal Case No. 774-V-03, the Court finds the accused-appellant Marlon Batrina **GUILTY** beyond reasonable doubt of the crime of Attempted Homicide, and hereby sentences him to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as the minimum, to four (4) years and two (2) months of *prision correccional*, as the maximum. He is **ORDERED to PAY** Bryan Paul Dela Paz the amount of ₱20,000.00 as moral damages and ₱20,000.00 as civil indemnity.

All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the time of finality of this Resolution until fully paid.

<sup>41</sup> REVISED PENAL CODE, Article 249.

<sup>42</sup> *Supra* note 37.

**SO ORDERED.”**

By authority of the Court:

*Mis D C Batt*  
**MISAEAL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
GER  
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(Crim. Case Nos. 773-74-V-03)

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