



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated November 4, 2020, which reads as follows:

“G.R. No. 232647 – (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. TIRSO GUEVARRAS Y CONGE, *accused-appellant*). – This resolves an appeal from the Court of Appeals Decision¹ in CA-G.R. CR-HC No. 07952, affirming with modification the conviction of Tirso Guevarras y Conge (Guevarras) for the attempted murder of Yolanda Dela Pena (Yolanda) and the murder of Rowel Dela Pena (Rowel).

An Information was filed against Guevarras charging him with one count of frustrated murder. It read, in part:

That on or about the 9th day of December 2009 in Quezon City, Philippines, the above-named accused, with intent to kill, with the qualifying circumstances of evident premeditation and treachery did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of YOLANDA A. DELA PENA by then and there kicking and stabbing her on her left arm thereby inflicting upon him serious and mortal wound, thus performing all acts of execution which would have produced the crime of Murder, as a consequence, but nevertheless did not produce it by reason or causes independent of the will of the perpetrator, that is the timely and able medical assistance rendered to said YOLANDA A. DELA PENA, to the damage and prejudice of the offended party.

The above attendance (sic) circumstances were present in the commission of the crime because accused planned the commission of the crime prior to its execution until its commission consciously adopting means or methods of attack, done suddenly and unexpectedly in order that the victim will not be able to defend himself and to ensure commission of the crime without risk to the accused.

¹ *Rollo*, pp. 2–12. The March 30, 2017 Decision was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Apolinario D. Bruselas, Jr., and Mari Christine Azcarraga-Jacob of the Thirteenth Division of the Court of Appeals, Manila.

CONTRARY TO LAW.²

A separate information was filed charging Guevarras for the crime of murder as follows:

That on or about the 9th day of December 2009 in Quezon City, Philippines, the above-named accused, with intent to kill with the qualifying aggravating circumstances of treachery and evident premeditation did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of ROWEL A. DELA PENA Y ARESTA serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said offended party.

The above attendance (sic) circumstances were present in the commission of the crime because accused planned the commission of the crime prior to its execution until its commission consciously adopting the means or methods of attack, done suddenly and unexpectedly in order that the victim will not be able to defend himself and to ensure commission of the crime without risk to the accused.³

During arraignment, Guevarras pleaded not guilty. After the conduct of pre-trial,⁴ trial on the merits ensued.

Yolanda and Antonio Lago (Lago) testified for the prosecution.

Yolanda testified that Guevarras sold goods in the same area as she did. On December 9, 2009, at around 5:30 p.m., Yolanda was selling items near the Bureau of Internal Revenue and Social Security System offices when Guevarras arrived with his brother, Renato Guevarras (Renato).⁵

Yolanda claimed that Renato kicked her cart, pointed his finger at her, and said, "Just because you have money you can sell everything and occupy the place."⁶ She explained that she continued selling and earning "because she had a lot of children to feed."⁷ Upon seeing the confrontation, Yolanda's son, Rowel, approached. However, she told him to stay away because Guevarras had an ice pick, and Renato had a knife.

Yolanda narrated that Guevarras kicked her, which caused her to fall to the ground. Renato then stabbed her. She said that when Rowel approached to help, Guevarras grabbed his collar and along with Renato,

² Id. at 2-3.

³ Id. at 3.

⁴ CA *rollo*, pp. 43-44.

⁵ Id. at 44.

⁶ Id.

⁷ Id.

stabbed him. She and Rowel then rode a tricycle to the East Avenue Medical Center but the doctor pronounced Rowel dead upon arrival.⁸

Afterwards, Yolanda sought the help of barangay officials to have Renato and Guevarras arrested. However, when they arrived at Guevarras' house, Renato had already escaped, and only Guevarras was arrested.⁹

Meanwhile, Lago testified that while he was on duty as Barangay Public Safety Officer of Barangay Pinyahan, Quezon City, Yolanda came to their office seeking assistance regarding the stabbing of her son. Lago and two other Barangay Public Safety Officers accompanied Yolanda to Guevarras' house where they arrested him. They first brought him to the Barangay Office, and afterwards took him to the Criminal Investigation and Detection Unit at Camp Karingal, Quezon City.¹⁰

The prosecution also presented Dr. Jericho Angelito Q. Cordero to testify on the autopsy he conducted on Rowel, as well as Mr. Reginaldo Luage, to testify as Records Custodian of the East Avenue Medical Center, but their testimonies were dispensed with upon stipulations by the parties on the autopsy of Rowel's body, and Yolanda's Emergency Blotter and Medico Legal Certificate on record at the East Avenue Medical Center.¹¹

The defense presented Eufrosinia Palopos (Palopos) and accused Guevarras as witnesses.

Palopos testified that at the time of the incident, she was selling drinks at the Social Security Systems office when she saw Yolanda crying. It was when she learned that someone by the name of "Jun" had been stabbed. She then claimed that Yolanda asked her where Guevarras resided. Thereafter, together with barangay officials, she accompanied Yolanda to Guevarras' home where Guevarras was arrested. Upon asking why Guevarras was apprehended, Palopos was surprised to hear that he had killed somebody. She said that the barangay officials then took Guevarras to the barangay hall for questioning, but he could not respond as Yolanda kept slapping him. Guevarras was later brought to Camp Karingal.¹²

In his defense, Guevarras testified that at the time of the incident, he was resting at home with his wife. At around 5:30 p.m of that day, Lago showed up at his house and asked him to go to the barangay hall. Upon arrival, he claimed that his name was called and he was handcuffed while Yolanda pointed at him. He denied Yolanda's accusations and asked her

⁸ Id. at 44-45.

⁹ Id. at 45.

¹⁰ Id.

¹¹ Id. at 46.

¹² Id. at 47.

why she was mad at him, but Yolanda did not answer and only said that he was Renato's brother.¹³

In its Decision,¹⁴ the Regional Trial Court found Guevarras guilty for the murder of Rowel. It gave credence to Yolanda's testimony and found it sufficient to establish Guevarras' participation in the crimes committed. As regards the crime against Yolanda, it held that because the injury inflicted on her was not fatal, Guevarras was guilty of attempted murder only instead of frustrated murder.¹⁵

The prosecution was able to establish that a person was killed namely Rowel A. Dela Pena as evidenced by his Certificate of Death (Exhibit "E") due to a stabbing incident and that the cause of death was Hemothorax as a result of stab wound to the thorax.

Witness for the prosecution Yolanda Dela Pena clearly testified that it was accused Tirso Guevaras and Renato Guevaras who stabbed victim Rowel Dela Pena. Yolanda Dela Pena was present or about one (1) meter away when victim Rowel Dela Pena was stabbed.

Treachery was employed by the accused. The attack was sudden, as testified to by victim Yolanda Dela Pena, and unexpected. The victims, Yolanda Dela Pena and Rowel Dela Pena had no idea that an attack was forthcoming and had no opportunity to defend themselves. In fact, accused Tirso Guevaras was armed with an ice pick while Renato Guevaras was armed with a knife. Clearly, treachery was present in the commission of the crime.¹⁶

The dispositive portion of the Regional Trial Court Decision read:

WHEREFORE, finding accused Tirso Guevaras y Conge Guilty beyond reasonable doubt of the crime of attempted murder committed against Yolanda Dela Pena and for the murder of Rowel Dela Pena, the Court hereby imposes the following penalties:

In Criminal Case No. Q-09-162237 for the attempted murder committed against Yolanda Dela Pena, the court hereby sentences accused Tirso Guevaras y Conge to suffer the penalty of imprisonment of Six (6) months and one (1) day of prision correccional, as minimum, to six (6) years and one (1) day of prision mayor, as maximum.

In Criminal Case No. Q-09-162338 for murder of Rowel Dela Pena, the court hereby sentences accused Tirso Guevaras to suffer the penalty of reclusion perpetua, to pay the heirs of the victim the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages and Php 30,000.00 as exemplary damages.

¹³ Id. at 48.

¹⁴ Id. at 42-51. The August 24, 2015 Decision in Crim. Case Nos. Q-09-162237-38 was penned by Presiding Judge Edgardo B. Bellosillo of the Regional Trial Court of Quezon City, Branch 95.

¹⁵ Id. at 48.

¹⁶ Id. at 50.

SO ORDERED.¹⁷

Guevarras filed a Notice of Appeal.¹⁸ In his brief, he argued that the prosecution failed to prove his guilt beyond reasonable doubt. He insisted that Yolanda's testimony contradicted assertions she made in her Sworn Statement, which suggested that Yolanda was not actually present at the crime scene.¹⁹ Guevarras also argued that the prosecution's evidence was insufficient to establish that treachery attended the crime.²⁰

The Court of Appeals affirmed Guevarras' conviction.²¹ On the inconsistencies in Yolanda's testimony and Sworn Statement, the Court of Appeals found that they were minor inconsistencies which did not diminish her credibility or the probative value of her testimony.²²

On the presence of treachery, the Court of Appeals reasoned:

In this case, the records show that the stab wounds were all directed on the back of the victim. The Medico-legal Officer Cordero testified that, based on his autopsy of the victim's body, the victim sustained three (3) injuries -- one (1) incise wound on the back portion of his left arm and two (2) stab wounds on the back penetrating the chest. This clearly shows that he was not in a position to defend himself. Moreover, the attack was done in a manner, which directly and specifically insured the execution of the acts without risk to appellant and his brother Renato arising from the defense which Rowel, then unarmed, might have made.²³

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, in view of the foregoing, the Decision dated 24 August 2015 is hereby **AFFIRMED** with the following **MODIFICATIONS**: In Criminal Case No. Q-09-162338, appellant **TIRSO GUEVARRAS y CONGE** is ordered to pay the heirs of the victim Rolanda (sic) Dela Pena as follows: Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php75,000.00 as exemplary damages. In Criminal Case No. Q-09-162237, appellant **TIRSO GUEVARRAS y CONGE** is ordered to pay the private offended party, Yolanda Dela Pena, as follows: Php25,000.00 as civil indemnity, Php25,000.00 as moral damages, Php25,000.00 as exemplary damages and Php50,000.00 as temperate damages.

All damages awarded shall earn interest at the rate of 6% per annum from the date of finality of this judgment until fully paid.

¹⁷ Id. at 51.

¹⁸ Id. at 11.

¹⁹ Id. at 33.

²⁰ Id. at 38.

²¹ *Rollo*, pp. 2-12.

²² Id. at 9.

²³ Id. at 8.

IT IS SO ORDERED.²⁴ (Emphasis in the original)

Thus, accused-appellant appealed to this Court.²⁵ The Court of Appeals then elevated the records of the case to this Court.²⁶

On December 5, 2017, the Office of the Solicitor General filed its Manifestation²⁷ stating that it would no longer file a supplemental brief. Accused-appellant filed a similar Manifestation²⁸ on December 29, 2017.

After considering accused-appellant's arguments and the records of the case, this Court resolves to affirm his conviction.

Article 248 of the Revised Penal Code defines and punishes the crime of Murder as follows:

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 *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. . . .

The evidence presented during trial established beyond reasonable doubt that accused-appellant, together with his brother Renato, killed Rowel, and that this killing was attended by treachery. Thus, he is guilty of murder. To support this finding, this Court quotes the Regional Trial Court Decision:

The prosecution was able to establish that a person was killed namely Rowel A. Dela Pena as evidenced by his Certificate of Death (Exhibit "L") due to a stabbing incident and and that the cause of death was Hemothorax as a result of stab wound to the thorax.

Witness for the prosecution Yolanda Dela Pena clearly testified that it was accused Tirso Guevaras and Renato Guevaras who stabbed victim Rowel Dela Pena. Yolanda Dela Pena was present or about one (1) meter away when victim Rowel Dela Pena was stabbed.

Treachery was employed by the accused. The attack was sudden, as testified to by victim Yolanda Dela Pena, and unexpected. The victims, Yolanda Dela Pena and Rowel Dela Pena had no idea that an attack was forthcoming and had no opportunity to defend themselves. In fact,

²⁴ Id. at 11.

²⁵ CA rollo, pp. 104–106.

²⁶ Id. at 107.

²⁷ Rollo, p. 28–32.

²⁸ Id. at 36–40.

accused Tirso Guevaras was armed with an ice pick while Renato Guevaras was armed with a knife. Clearly, treachery was present in the commission of the crime.²⁹

Similarly, the evidence also established that accused-appellant, together with Renato, attempted to kill Yolanda and that this attempt was also attended by treachery:

While victim Yolanda Dela Pena [was] tending her cart, the accused and his brother Renato arrived and attacked her with an ice pick and bladed weapon, however her injury was not fatal. Had her son Rowel Dela Pena not come to pacify the duo, she might [have] sustained [a] mortal wound. As a consequence, the accused and his brother Renato turned their ire on the victim by repeatedly stabbing him which caused his untimely death.

Based on the Medico Legal Certificate (Exhibit "D") dated December 9, 2009 of victim Yolanda Dela Pena, it was stated that she was treated for "12 cm abrasion on lateral aspect of left forearm" and it will require medical attendance for 9 days if without complication. Victim Yolanda Dela Pena also testified during cross examination that she was not confined in the hospital. In fact[,] after she was treated at the East Avenua Medical Center, she escorted several barangay officials to go to the house of the accused (TSN dated October 19, 2010 pp. 10-12). Given these set of undisputed facts, it is clear that the injury sustained by victim Yolanda Dela Pena was not fatal or mortal since the treatment period for her wound was short and she was discharged from the hospital on the same day she was admitted therein. Clearly, accused Tirso is liable only for the crime of attempted murder as regards victim Yolanda Dela Pena.³⁰

However, accused-appellant insists that Yolanda's testimony was inconsistent with the prosecution's documentary evidence as well her assertions in her Sworn Statement. Thus, he claims his defense of denial should not have been disregarded.³¹

This argument is weak. As pointed out by the Court of Appeals, the alleged inconsistencies in Yolanda's testimony pertain to minor matters, and do not diminish its probative value.³² Moreover, inconsistencies in witness testimony unrelated to the elements of the crime charged are insufficient to reverse a conviction.³³

Accused-appellant also argues that treachery did not attend the crime. He points out that Yolanda herself testified that there were other people

²⁹ CA rollo, p. 50.

³⁰ Id. at 49.

³¹ Id. at 31-33.

³² CA rollo, p. 93.

³³ *People v. Nelmda*, 694 Phil. 529 (2012) [Per J. Perez, En Banc].

present at the scene; and maintains that since the presence of other people posed a risk to him, it belies any treachery on his part.³⁴

This Court is not convinced. Both accused-appellant and Renato were armed when they suddenly attacked Yolanda and Rowel. Rowel's collar was even grabbed by accused-appellant while he was being stabbed by accused-appellant and Renato. Moreover, Rowel's three (3) stab wounds were on the back.³⁵ It is clear from these circumstances that Rowel had no opportunity to defend himself or to retaliate against the attack.

Consequently, there is no error in the lower courts' appreciation of the evidence presented and their conclusion that accused-appellant is guilty beyond reasonable doubt of the crimes charged.

However, the awards of moral, exemplary, and actual damages must be modified in view of prevailing jurisprudence.³⁶

WHEREFORE, this Court **AFFIRMS with MODIFICATION** the Court of Appeals' March 30, 2017 Decision in CA-GR. CR-HC No. 07952 which affirmed with modification the August 24, 2015 Decision of the Regional Trial Court in Criminal Case Nos. Q-09-162237-38. Accused-appellant Tirso Guevarras y Conge is hereby found **GUILTY** beyond reasonable doubt of the crimes of murder and attempted murder. The following penalties are imposed:

1) In Criminal Case No. Q-09-162237 for the attempted murder of Yolanda A. Dela Pena, accused Tirso Guevarras y Conge is sentenced to suffer the penalty of imprisonment of six (6) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, and to pay Yolanda A. Dela Pena ₱25,000.00 as civil indemnity, ₱25,000.00 as exemplary damages, and ₱25,000.00 as moral damages.

2) In Criminal Case No. Q-09-162338 for the murder of Rowel A. Dela Pena, accused Tirso Guevarras y Conge is sentenced to suffer the penalty of *reclusion perpetua*, and to pay Rowel Dela Pena's heirs ₱75,000.00 as civil indemnity, ₱25,000.00 as exemplary damages, and ₱75,000.00 as moral damages.

Interest shall be imposed on all the monetary awards at the rate of 6% *per annum* from the date of finality of this Resolution until full payment.³⁷

³⁴ CA rollo, pp. 38-39.

³⁵ CA rollo, p. 33.

³⁶ See *People v. Jugueta*, 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

³⁷ See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

SO ORDERED.”

By authority of the Court:

Misael Domingo C. Battung III
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court

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