



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **05 May 2021** which reads as follows:*

“G.R. No. 248181 (*People of the Philippines v. Joselito Rodriguez*). – The appeal is **DENIED.**

***The Information
against accused-
appellant Joselito
Rodriguez is valid***

In the absence of any showing that Assistant City Prosecutor Meynardo Bautista, Jr. filed and signed the Information for murder against accused-appellant and his co-accused in bad faith or with criminal intent, he is deemed to have done so with lawful authority, sans any objection from the defense before during and after arraignment. On this score, we affirm the ruling of the Court of Appeals, *viz.*:

To begin with, it must be emphasized that the accused-appellant was indicted upon a valid information for Murder filed by the Office of the City Prosecutor, Quezon City, which reflects the phrase “[a]pproved by the authority of the City Prosecutor,” above the signature and name of First Assistant City Prosecutor Bautista, Jr. And as such, the presumption of regularity in the performance of official duties attaches unless proven otherwise. Further, co-accused-appellant pleaded not guilty to the subject criminal Information without any question as to its validity on the ground that the office who filed the same had no authority to do so. This is deemed

a waiver of any objections thereto except those based on Section 3, (a), (b), (g) and (i) Rule 117 of the Rules of Court.¹

In *Gomez v. People*,² the Court ruled that a handling prosecutor who files an Information despite lack of authority but without any *indicia* of bad faith or criminal intent will be considered as a *de facto* officer, clothed with the color of authority and exercising valid official acts, thus:

x x x x

The Court emphasizes that the prosecution of crimes, especially those involving crimes against the State, is the concern of peace officers and government prosecutors. Public prosecutors, not private complainants, are the ones obliged to bring forth before the law those who have transgressed it. They are the representatives not of an ordinary party to a controversy, but of a Sovereign whose obligation to govern impartially is as compelling as its obligation to govern at all. **Accordingly, while an Information which is required by law to be filed by a public prosecuting officer cannot be filed by another, the latter may still be considered as a de facto officer who is in possession of an office in the open exercise of its functions under the color of an appointment even though, in some cases, it may be irregular. This is because a prosecutor is ingrained with the reputation as having the authority to sign and file Information which makes him or her a de facto officer.**

x x x However, a handling prosecutor who files an Information despite lack of authority but without any *indicia* of bad faith or criminal intent will be considered as a mere de facto officer clothed with the color of authority and exercising valid official acts. In other words, the lack of authority on the part of the handling prosecutor may either result in a valid filing of an Information if not objected to by the accused or subject the former to a possible criminal or administrative liability – but it does not prevent the trial court from acquiring jurisdiction over the subject matter or over the person of the accused.
(Emphasis supplied)

So must it be.

***Rogene Garcia is
a credible witness***

Rogene Garcia (Rogene) identified and testified on his *Kusang Loob na Salaysay* wherein he narrated on the role of accused-appellant Joselito Rodriguez (Joselito) in the killing of Rodel Arnaiz (Rodel):

T 17 : Ano pa ang sumunod nangyari kung mayroon?

S : Pagdating sa prisinto ay dinala kame sa East Avenue Medical Center at iniharap kami kay ERNESTO RIVERA. Nalaman namin na kami and itinuturong kasama raw sa bumaril sa kanya. Pero hindi naman po tooto [sic] iyon, dahil ang pinsan ko nga ho ang unang biktima nila. Kaya dinala

¹ *Rollo*, p. 8.

² G.R. No. 216824. November 10, 2020.

uli kami sa Talipapa Police Station No. 3. **Pagdating namin sa prisinto ay laking gulat ko dahil yung isa sa suspect sa pagpatay kay RODEL ARNAIZ na si JOSELITO RODRIGUEZ ay dumating, pero kami ang itinuturong bumaril kay ERNESTO RIVERA. Pero hindi nga ho totoo dahil siya (JOSELITO RODRIGUEZ) ang nakita kong isa sa bumaril at nambagsak ng bato sa ulo ng pinsan kong namatay. Kaya pagkatapos kaming dalhin sa Fiscal ay pinusasan na siya (Joselito Rodriguez) ni SPO1 Edgargo Buluran na nagimbestiga sa kaso ERNESTO RIVERA. Noong may dumating na taga CIDU, Camp Karingal na mga imbestigador ay itinurn-over po kame para maimbestigahan tungkol sa pagkamaty ni RODEL ARNAIZ @ DONDON. (Emphasis supplied)³**

On direct testimony, Rogene clarified, thus:

Q: During your initial testimony, you made mentioned (sic) that Michael Rodriguez shot Rodel Arnaiz. Correct?

A: Yes, sir.

Q: How far was Rodel Arnaiz at the time he was shot by Michael Rodriguez?

A: One arm[']s] length, sir.

Q: What kind of gun was used by Michael Rodriguez?

A: Shotgun.

Q: What happened now to Rodel Arnaiz at the time he was shot by Michael Rodriguez?

A: A stone was dropped on him.

Q. What was the position of Rodel Arnaiz at the time the stone was dropped on him?

A. He was facing down the floor.⁴

Reconciling accused-appellant's narration in his *Kusang Loob na Salaysay* and his direct testimony, the trial court concluded that accused-appellant participated in the killing of Rodel by dropping a concrete stone down the latter's head even though Rodel was already lying face down on the ground.

Indeed, the testimony of a single witness, when positive and credible, is sufficient to support a conviction even for murder.⁵ More so, when there is no showing that the witness was impelled by ill motive to falsely testify against the accused, as in this case.⁶ On this score, therefore, accused-appellant's denial and *alibi* must fail.⁷

***Joselito is guilty of
murder***

³ *Rollo*, pp. 11-12.

⁴ *CA rollo*, p. 48.

⁵ *People v. Avila*, 787 Phil. 346, 358 (2016).

⁶ See *People v. Chan*, G.R. No. 226836, December 05, 2018.

⁷ *People v. Golidan*, 823 Phil. 548, 578 (2018).

The elements of murder are: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248⁸ of the Revised Penal Code (RPC); and (4) the killing is not parricide or infanticide.⁹

There is no question here pertaining to the presence of the first and second elements. The remaining question is whether the qualifying circumstances of treachery and abuse of superior strength, as alleged in the Information, are likewise present.

Treachery requires the following elements: 1) employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and 2) deliberate or conscious adoption of such means, method, or manner of execution.¹⁰

A finding of treachery should be based on clear and convincing evidence. The same ought to be as conclusive as the fact of killing itself. Its existence cannot be presumed. As with the finding of guilt of the accused, any doubt as to the existence of treachery should be resolved in favor of the accused. The fact that the attack was unexpected cannot be the sole basis of a finding of treachery even if the attack was intended to kill another so long as the victim's position was merely accidental. The means adopted must have been the result of a determination to ensure success in committing the crime.¹¹

Here, treachery attended the killing of Rodel. To recall, Rodel had raised both his hands to show that he was not armed as he approached Michael Rodriguez (Michael), appellant, and Ernesto Rivera (Ernesto). But without any warning, Michael instantly shot him with a shotgun. For his part, accused-appellant dropped a concrete stone down Rodel's head, albeit at that time, the latter was already lying face down on the ground. As keenly noted by the Court of Appeals:

Undoubtedly, the killing of Rodel was qualified by the presence of treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly

⁸ 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.
2. In consideration of a price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

⁹ *People v. Maron*, G.R. No. 232339, November 20, 2019.

¹⁰ *Cirera v. People*, 739 Phil. 25, 44-45 (2014).

¹¹ *Id.*

and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make. Herein, it was established that the attack on Rodel was so sudden and without warning. As testified by the prosecution witness, Rogene, immediately upon their arrival, Michael simultaneously shot Rodel. Although the attack was frontal, it was sudden and unexpected which rendered it impossible for Rodel to defend himself, adding too that he was unarmed at that time. Treachery became more evident when accused-appellant, pursuing his intent to kill, dropped a concrete on Rodel's head while lying helpless on the ground.¹²

As for abuse of superior strength, it must be proved that there was a notorious inequality of forces between the victim and the aggressor that was plainly and obviously advantageous to the latter who purposely selected or took advantage of such inequality in order to facilitate the commission of the crime. The assailant must be shown to have consciously sought the advantage, or to have the deliberate intent to use his or her superior advantage. In this context, to take advantage of superior strength means to purposely use force excessively out of proportion to the means of defense available to the person attacked. The appreciation of this qualifying or aggravating circumstance depends on the age, size and strength of the parties.¹³

Here, Rodel was totally unarmed when he approached Michael, appellant, and Ernesto. But Michael, armed with a powerful shotgun, instantly and without warning just shot the unsuspecting and unarmed victim. And while the victim lay face down on the ground, appellant took his turn and dropped a concrete stone down the victim's head. Evidently, Michael, appellant, and Ernesto took advantage of their number, their firepower, and concrete stone to ensure that Rodel was brought down. This is clear and simple abuse of superior strength, albeit it is deemed absorbed in treachery. *People v. Kalipayan*,¹⁴ teaches:

With this finding that treachery is present, the conclusion that the circumstance of abuse of superior strength is absorbed therein necessarily follows. Even without a definite finding as to whether it exists in this case or not, it is beyond cavil that treachery, as a qualifying circumstance, absorbs the aggravating circumstance abuse of superior strength even though the latter was alleged in the information. Thus, the circumstance of abuse of superior strength should not be appreciated as a separate aggravating circumstance.

Going now to the existence of conspiracy, we agree with the Court of Appeals that appellant conspired with his co-accused Ernesto and Michael in killing the victim, thus:

Also, the prosecution adequately demonstrated how the accused-appellant acted in concert with two other individuals in killing the victim Rodel. Rogene categorically testified that when they reached the place of Michael to settle their differences, the latter, saw Ernesto gave a shotgun to

¹² *Rollo*, p. 10.

¹³ *People v. Evasco*, G.R. No. 213415, September 26, 2018, 881 SCRA 79, 91.

¹⁴ 824 Phil. 173, 191 (2018).

Michael and *sumpak* to accused-appellant. Thereafter, Michael and accused-appellant approached them, with Michael shooting Rodel. While Rodel was lying face flat on the ground, accused-appellant even dropped a concrete on his head. The Medico Legal Report and Autopsy Report of Dr. Palmero on the injuries sustained by the victim supports this.

Evidently, accused-appellant and his two (2) companions have shown to have acted in unison of their common design and purpose of assaulting the unarmed victim. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Proof of conspiracy may be direct or circumstantial. So long as the evidence presented show a “common design or purpose” to commit the crime, all of the accused shall be held equally liable as co-principals even if one or more of them did not participate in all the details of the execution of the crime.¹⁵

Imposable Penalty and Damages

Article 248 of the Revised Penal Code, as amended by RA 7659, states:

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 x x x

Applying Article 63(2)¹⁶ of the Revised Penal Code here, the lesser of the two (2) indivisible penalties, *i.e.*, *reclusion perpetua* shall be imposed provided there is no mitigating or aggravating circumstance that attended the killing, as in this case. Hence, both courts below correctly sentenced appellant to *reclusion perpetua*.

On the award of damages, prevailing jurisprudence¹⁷ ordains the grant of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages to the Heirs of Rodel. Thus, the Court of Appeals correctly granted these monetary awards.

¹⁵ *Rollo*, pp. 10-11.

¹⁶ Art. 63. Rules for the application of indivisible penalties. -x x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

¹⁷ *People v. Jugueta*, 783 Phil. 806, 848 (2016).

1. For those crimes like, Murder, Parricide, Serious Intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties:

x x x

2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:

Civil indemnity - ₱75,000.00

Moral damages - ₱75,000.00

Exemplary damages - ₱75,000.00

As for the award of ₱35,000.00 as actual damages (based on the Contract for Funeral Services), we award, in its stead, ₱50,000.00 as temperate damages in accord with *People v. Angeles*,¹⁸ viz.:

On the award of actual damages, the family of Abelardo Evangelista presented receipts in the amount of Forty Thousand Six Hundred and Fifty Pesos (P40,650.00) for coffin, funeral mass, and blessing. Although they claimed to have also spent Forty Thousand Pesos (P40,000.00) for the wake, they failed to present receipts for the alleged expense. Hence, the actual damages proven is only Forty Thousand Six Hundred Fifty Pesos (P40,650.00).

But, as pronounced in *Gervero* and *People v. Jugueta*, “when no documentary evidence of burial or funeral expenses is presented in court, the amount of P50,000.00 as temperate damages shall be awarded.” Considering that the receipts presented by Abelardo’s heirs did not exceed Fifty Thousand Pesos (P50,000.00), they shall, in lieu of actual damages, be granted Fifty Thousand Pesos (P50,000.00) temperate damages in order to avoid the situation where those who did not present any receipt at all would get more than those who claimed for more than Fifty Thousand Pesos (P50,000.00) but failed to present receipts for the excess of that amount. Verily, the heirs of Abelardo Evangelista are entitled to Fifty Thousand Pesos (P50,000.00) as temperate damages, in lieu of actual damages.

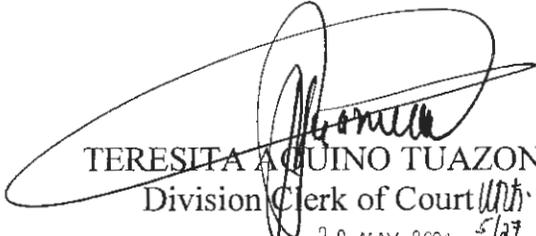
These monetary awards shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

WHEREFORE, the appeal is **DENIED**. The assailed Decision dated March 13, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10134 is **AFFIRMED with MODIFICATION**. Appellant Joselito Rodriguez is found **GUILTY** of **MURDER** and sentenced to *reclusion perpetua*.

He is further required **TO PAY** the Heirs of Rodel Arnaiz ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. All monetary awards are subject to six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

SO ORDERED.” (J. Lopez, J., designated additional member per Special Order No. 2822 dated April 7, 2021)

By authority of the Court:


TERESITA AQUINO TUZON
Division Clerk of Court
28 MAY 2021 5/27

¹⁸ G.R. No. 224289, August 14, 2019.

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HON. PRESIDING JUDGE (reg)
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(Crim. Case No. Q-08-153610)

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*with copy of CA Decision dated 13 March 2019
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