



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated August 27, 2020 which reads as follows:*

**“G.R. No. 239629 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus MAGDALENA\* BERDANDINO,\*\* ALBERTO BERDANDINO\*\* AND JONNY BERDANDINO,\* accused, MAGDALENA BERDANDINO AND ALBERTO BERDANDINO, accused-appellants.**

RESOLUTION

After a careful review of the records of the case and the issues submitted by the parties, the Court affirms with modification the Decision<sup>1</sup> dated July 25, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02087. The facts, as borne out by the records, sufficiently support the conclusion that accused-appellants **MAGDALENA BERDANDINO** (Magdalena) and **ALBERTO BERDANDINO** (Alberto) are indeed guilty of the crime of Murder. The issues and matters raised before the Court, the same ones as those raised in the CA, there being no supplemental briefs filed, were sufficiently addressed and correctly ruled upon by the CA.

It is well-settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court.<sup>2</sup> Here,

\* Spelled “Magdalena” in some parts of the CA rollo.

\*\* Spelled “Bernardino” in some parts of the rollo and CA rollo.

• Id.; Jonny Berdandino died during the pendency of the case in the Regional Trial Court, rollo, p. 5.

<sup>1</sup> Rollo, pp. 4-24. Penned by Associate Justice Gabriel T. Robeniol, with Associate Justices Edgardo L. Delos Santos (now a member of this Court) and Edward B. Contreras, concurring.

<sup>2</sup> *People v. Gerola*, G.R. No. 217973, July 19, 2017, 831 SCRA 469, 478.

after examining the records of this case, the Court finds no cogent reason to vacate the Regional Trial Court's appreciation of the evidence, which was affirmed with modifications by the CA.

The elements of the crime of Murder are as follows: (1) that a person was killed; (2) that the accused killed him; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) that the killing is not parricide or homicide.<sup>3</sup>

In the case at bar, the prosecution was able to prove all the elements of Murder: (1) the sole eyewitness, Evelyn Tablada (Tablada) testified that Lorna Gatela (Gatela), the victim, was killed; (2) she positively identified accused-appellants Magdalena and Alberto and accused Jonny Berdandino (Jonny) as the assailants, (3) the killing was attended by the qualifying circumstance of abuse of superior strength, and (4) the killing is not parricide or homicide.<sup>4</sup>

It is obvious in the concerted and collective actions of Magdalena, Alberto, and Jonny before, during, and after the killing incident that they conspired in the murder of Gatela. Prior to the killing, as testified by Barangay Captain Ramon Dagami, Alberto and Jonny went to the house of Gatela and challenged her to a fight because of Gatela's testimony against the accused in a case filed by one Julius Villablanca for theft of coconuts against the accused.<sup>5</sup> On the day of the killing, Magdalena, Alberto, and Jonny were all armed with deadly weapons while prone to the ground waiting for Gatela to pass by.<sup>6</sup> When Gatela arrived, Magdalena and Jonny positioned themselves 2 ½ meters away from Gatela to prevent her escape while Alberto delivered the first among the many hack stabs at Gatela.<sup>7</sup> After they killed Gatela, they all fled the crime scene together.<sup>8</sup>

As correctly ruled by the CA, although Tablada testified that she only saw Alberto hacking Gatela since Tablada had dropped to the ground and cried after Alberto hacked Gatela, the conspiracy among the assailants renders irrelevant the authorship of each and every injury or wound inflicted upon the victim. In conspiracy, the act of one is the act of all; the injury inflicted by one was inflicted by all.<sup>9</sup>

<sup>3</sup> *People v. Quita*, G.R. No. 212818, January 25, 2017, 816 SCRA 41, 53-54.

<sup>4</sup> *Rollo*, pp. 11-12.

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.* at 12.

<sup>7</sup> *Id.* at 12-13.

<sup>8</sup> *Id.* at 14.

<sup>9</sup> *People v. Alib*, G.R. No. 130944, January 18, 2000, 322 SCRA 93, 102.

Moreover, the fact that all the accused were armed with deadly weapons – Alberto was armed with a bolo, Magdalena with spear, and Jonny with a long bolo – coupled with the eight (8) hacking wounds and one (1) stab wound on different parts of Gatela's body, five (5) of which are considered fatal<sup>10</sup> support the undeniable conclusion that they each had a part in stabbing the victim to death. Nevertheless, even without such conclusion, this Court has consistently held that in conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose and design to bring about the death of the victim.<sup>11</sup>

In this connection, the killing of Gatela was indeed attended by abuse of superior strength. There is abuse of superior strength when the perpetrators of a crime deliberately used excessive force, thereby rendering the victim incapable of defending himself. The notorious inequality of forces created an unfair advantage for the aggressor.<sup>12</sup> As previously mentioned, Magdalena, Alberto, and Jonny deliberately armed themselves with deadly weapons, ganged up on the hapless and unarmed victim, and hacked her multiple times causing her untimely demise.

The defense of alibi of Magdalena and Jonny fails to persuade. It is important to stress that courts always receive with caution, if not suspicion, evidence of alibi, not only because it is inherently weak and unreliable, but also because of its easy fabrication. To overcome the evidence of the prosecution, an alibi, must satisfy the test of full, clear, and satisfactory evidence. This test requires not only proof that the accused was somewhere else other than the scene of the crime, but clear and convincing proof of physical impossibility for him to have been at the place of the commission of the crime.<sup>13</sup> In this case, it was not physically impossible for Jonny and Magdalena to be at Barangay Cancaraja, Pastrana Leyte where Gatela was attacked as said *locus criminis* is only one (1) kilometer away from District III, Pastrana, Leyte where Jonny and Magdalena claim they were allegedly staying at the time of the commission of the crime.

Lastly, Alberto's defense of mistake of fact, self-defense, and accident must likewise fail. He insists that he perceived an unlawful

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<sup>10</sup> *Rollo*, p. 8.

<sup>11</sup> *People v. Alib*, supra note 9, at 101.

<sup>12</sup> *People v. Credo*, G.R. No. 197360, July 3, 2013, 700 SCRA 633, 655.

<sup>13</sup> *People v. Villanueva*, G.R. No. 94133, May 8, 1992, 208 SCRA 810, 814.

aggression from Danny Escodillo (Escodillo) who was about to hack him, which gave him a lawful right to stab Escodillo to foil the attack (*self-defense*), but he mistakenly stabbed Gatela instead thinking that Gatela was Escodillo (*mistake of fact*), and concludes that Gatela's death was an *accident*.<sup>14</sup> However, these defenses run contrary to the clear and positive account of Tablada that it was obviously Gatela that the assailants were after and that she personally witnessed Alberto stab Gatela. Also, as correctly ruled by the CA, even assuming that Alberto's narration is true, what Alberto committed is a *mistake in identity*,<sup>15</sup> *i.e.*, he mistook Gatela to be Escodillo, which, however neither justified his act or exempted him criminal liability.<sup>16</sup> In any case, assuming the remote possibility, the mistake in the identity of the victim does not exonerate Alberto pursuant to the rule that one who performs a criminal act should be held liable for the act and for all its consequences although the victim was not the person whom the fellow intended to injure.<sup>17</sup>

However, the Court does not agree with the CA that the mitigating circumstance of voluntary surrender should be appreciated in favor of Alberto. Although Alberto surrendered to *retired* policeman Wilfredo Nierva upon his sister's advice, said act is not the voluntary surrender contemplated by law. For voluntary surrender to be appreciated as a mitigating circumstance, the following elements must be present, to wit: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a **person in authority or the latter's agent**; and (3) the surrender is **voluntary**.

In this case, there are two elements apparently lacking. *First*, Alberto did not surrender to a person in authority or an agent of a person in authority.<sup>18</sup> He surrendered to a **retired** police officer who

<sup>14</sup> *Rollo*, pp. 19-20.

<sup>15</sup> *People v. Lising*, G.R. Nos. 106210-11, January 30, 1998, 285 SCRA 595, 646.

<sup>16</sup> *Rollo*, p. 21.

ART. 4. [RPC] *Criminal Liability*.—Criminal liability shall be incurred:

1. By any person committing a felony (*delito*) although the wrongful act done be different from that which he intended.

<sup>17</sup> *People v. Lising*, supra note 15.

<sup>18</sup> ART. 152. [RPC] *Persons in authority and agents of persons in authority—Who shall be deemed as such*.—In applying the provisions of the preceding and other articles of this Code, any person directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board, or commission, shall be deemed a person in authority. A barangay captain and a barangay chairman shall also be deemed a person in authority.

Any person who, by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as a barrio councilman, barrio policeman and barangay leader, and any person who comes to the aid of persons in authority, shall be deemed an agent of a person in authority.

was obviously already stripped of any authority vested in him due to his retirement. Upon his retirement, his status reverted to that of an ordinary citizen. *Second*, it could be inferred from his acts that his surrender was not voluntary. He merely surrendered himself because of the advice of his sister.<sup>19</sup> The voluntariness of his surrender is likewise negated by the fact that after his incarceration, he escaped from prison and only later was apprehended again by the Philippine National Police.<sup>20</sup> **The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.**<sup>21</sup> This intent is clearly absent in Alberto's case.

Nevertheless, even if the Court considers the mitigating circumstance of voluntary surrender, the imposable penalty is still *reclusion perpetua* as it is a single indivisible penalty unaffected by the attendance of any mitigating circumstance.<sup>22</sup>

**WHEREFORE**, premises considered, the appeal<sup>23</sup> is **DISMISSED** for lack of merit. The Court hereby **ADOPTS** the findings of fact and conclusions of law in the Decision dated July 25, 2017 of the Court of Appeals, in CA-G.R. CR-HC No. 02087. The Decision finding accused-appellants **MAGDALENA BERDANDINO and ALBERTO BERDANDINO** guilty beyond reasonable doubt for the crime of Murder under Article 248 of the Revised Penal Code, as amended, is **AFFIRMED**. Accused-appellants are ordered to pay the heirs of the victim **SEVENTY FIVE THOUSAND PESOS (₱75,000.00) as civil indemnity, SEVENTY FIVE THOUSAND PESOS (₱75,000.00) as moral damages, SEVENTY FIVE THOUSAND PESOS (₱75,000.00) as exemplary damages, and FIFTY THOUSAND PESOS (₱50,000.00) as temperate damages each**. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until fully paid.

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<sup>19</sup> *Rollo*, p. 9.

<sup>20</sup> *Id.*



<sup>21</sup> *People vs. Manzano*, G.R. No. 217974, March 5, 2018, 857 SCRA 322, 356.

<sup>22</sup> ART. 63. [RPC] *Rules for the application of indivisible penalties*.—In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

<sup>23</sup> *Rollo*, pp. 25-27.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court 

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**128-B4**

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