



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 2, 2020** which reads as follows:*

“G.R. No. 250043 (People of the Philippines, Plaintiff-Appellee, v. Alex Nidera y Singzon, Accused-Appellant). – In this appeal, accused-appellant assails the Decision dated 17 December 2018¹ promulgated by the Court of Appeals (CA) in CA-G.R. CEB-CR HC No. 02314, which affirmed the ruling of the Regional Trial Court (RTC) finding accused-appellant guilty of the murder of Jerson Delos Santos (Jerson).

Antecedents

Accused-appellant was charged with murder under Article 248 of the Revised Penal Code (RPC) in an Information stating:

That on or about the 5th day of June 2009 in the Municipality of Capoocan, Province of Leyte, Philippines and within the jurisdiction of the Honorable Court, the said accused, with intent to kill, armed with a stone and bladed weapon, with treachery and evident premeditation did then and there willfully, unlawfully and feloniously attack, assault, hack and stab to death Jerson Delos Santos inflicting upon said Jerson Delos Santos fatal wounds which cause (sic) his direct death.

CONTRARY TO LAW.²

Trial on the merits ensued after accused-appellant entered a plea of “not guilty.”³

- over – nine (9) pages ...

181-C

¹ *Rollo*, pp. 5-24; penned by Associate Justice Louis P. Acosta and concurred in by Associate Justices Pamela Ann Abella Maxino and Dorothy P. Montejo-Gonzaga of the Twentieth Division, Court of Appeals, Cebu City.

² *Id.* at 6.

³ *Id.*

The factual milieu of the case, according to the version of the prosecution, was quoted by the CA in the following manner:

The first witness was SPO3 Gary Zaldy Ligutan [who] testified in this wise: On June 6, 2009 he was assigned at the Capoocan Municipal Police Office. On that day, and while on duty, Benjamin Delos Santo[s] and Ronald Brazil arrived and reported a stabbing incident which transpired at 8:30 o'clock that morning. He, SPO2 Arturo Micmic, PO2 Rodolfo Mercolita and PO2 Charlie Nartea, accompanied by their confidential agent proceeded to the house of Alex Nidera in order to arrest him. When they arrived at the house of the latter and after calling his name, Alex Nidera peacefully surrendered himself to them. Alex Nidera also turned over to SPO2 Arturo Micmic a kitchen knife. They then returned to their station and upon arrival thereat, he turned over the accused and the bladed weapon to the investigator. In connection with this case, he and his fellow responding officers executed a joint affidavit of arrest.

The second witness was SPO1 Arturo Micmic whose testimony could be summarized thus: He is a policeman who was assigned at the Capoocan Municipal Police Station starting in the year 1999. He was about to start his duty at the said station on June 6, 2009 when they received a report about a stabbing incident in which the suspect was Alex Nidera. He and three other police officers on duty, accompanied by one Benjamin Delos Santos proceeded to the house of Alex Nidera in order to arrest him. When they arrived at the house of the latter and after calling his name, Alex Nidera surrendered himself to them. When he asked Alex Nidera where was the knife used in the incident, the latter returned to his house and when he came back, he carried a kitchen knife and turned over to them. They returned to their station and upon arrival thereat, he turned over the accused and the bladed weapon to their investigator. In connection with his case, he and his fellow responding officers executed an affidavit. However, he has no knowledge about the stabbing incident. Benjamin Delos Santos, while mentioned in their affidavit, has not executed any affidavit in connection with the case. He has not placed any distinguishing mark on the knife surrendered by the accused to them.

The third witness was SPO2 Enrique Delgado whose testimony was dispensed with after the defense stipulated with the prosecution about the gist of his testimony which is to identify the entries in the police blotter logbook.

The fourth witness to be presented was Dr. Bibiana O. Cardente. However, her testimony was dispensed [with] after the parties stipulated with the prosecution regarding the purposes for which her testimony was being offered.

The fifth witness was Mr. Ervin Flores, who was presented to give an eyewitness account. He recalls that at 8:45 o'clock in the

- over -

181-C



evening of June 5, 2009, he was in the company of his kuya Jerson and kuya Edmar walking the length of the National Highway after whiling away the time at the Carnival Fair in Poblacion, Capoocan, Leyte. Jerson placed both his arms on their shoulders while they were walking. Suddenly, a stone coming from behind them hit Jerson, causing him to fall face down to the ground. They also stumbled to the ground. While his kuya Jerson was still slumped in the ground, Alex Nidera stabbed Jerson using a small bolo, hitting the left side of the body. When Jerson turned around, he was stabbed again and was hit at the abdominal part of his body. Jerson fell to the ground on his back. Alex Nidera delivered more blows and then mounted himself on top of Jerson and tried to slash the neck of Jerson. When Jerson was no longer moving, Alex Nidera stood up and casually walked away. He has known Alex Nidera prior to the incident.

On cross-examination, he admitted that his kuya Jerson was already tipsy when the latter urged him and his kuya Edmar to go home. It was while they were walking along the National Highway in Brgy. Buti, Capoocan, Leyte when somebody from behind hit his kuya Jerson with a stone, hitting his kuya Jerson on the left side of his head. He then ran away. From where he was, [he] saw that many persons surrounded Jerson while the latter was being stabbed by Alex Nidera. The latter however did not harm him even if he was just some three meters away. His kuya Jerson died trying to defend himself from the blows of Alex Nidera.

The last witness to testify was Mrs. Delia Delos Santos. However, her testimony was dispensed with after the defense stipulated with the prosecution regarding the amount of actual damages incurred for the [embalment], wake and interment.⁴

Accused-appellant did not take the stand and the testimonies of SPO4 Gary Zaldy Ligutan and SPO2 Enrique Delgado were dispensed with after the parties stipulated on the gist of their supposed statements, which centered on the fact of accused-appellant's surrender as reflected in the police blotter.⁵

Ruling of the RTC

The RTC rendered judgment on 31 March 2016 convicting accused-appellant for murder, to wit:

WHEREFORE, premises well considered, judgment is hereby rendered, finding the accused **ALEX NIDERA y Singzon GUILTY** beyond reasonable doubt of Murder, qualified with Treachery. Accordingly, the said accused is also ordered to indemnify the Heirs of

- over -

181-C

⁴ *Id.* at 6-8.

⁵ *Id.* at 9.

Jerson Delos Santos the amount of **Php75,000.00** as civil indemnity; **Php50,000.00** for moral damages; **Php30,000.00** for exemplary damages and **Php30,000.00** for actual damages.

SO ORDERED.⁶

The trial court gave credence to the testimony of the prosecution witnesses as corroborated by the medico legal report on the victim. The eyewitness was able to squarely identify accused-appellant as the perpetrator of the crime. It also found the presence of the qualifying circumstance of treachery when accused-appellant stabbed the victim from behind after the latter fell down from the impact of the stone thrown at him.⁷

Ruling of the CA

On 17 December 2018, the CA promulgated the assailed decision affirming accused-appellant's conviction, viz:

ACCORDINGLY, the assailed Judgment dated 31 March 2016 rendered by the Regional Trial Court, Branch 36 of Carigara, Leyte in Criminal Case No. 5103 is hereby AFFIRMED with MODIFICATION that accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole; and to pay the heirs of the victim, Jerson Delos Santos, the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 by way of moral damages, ₱75,000.00 as exemplary damages and [₱]50,000.00 as temperate damages; all with interest at the legal rate of six percent (6%) *per annum* this date until fully paid.

SO ORDERED.⁸

As ruled by the CA, all the elements of murder were established by the prosecution with moral certainty. It was accused-appellant who killed and stabbed the victim, and the killing was attended by treachery. The information against accused-appellant was also sufficiently worded for the proper appreciation of the said qualifying circumstance. In any case, accused-appellant failed to timely raise this issue prior to arraignment. Lastly, the CA affirmed the RTC's refusal to consider voluntary surrender as a mitigating circumstance.⁹

- over -

181-C

⁶ CA *rollo*, pp. 54-55.

⁷ *Id.* at 48-54.

⁸ *Rollo*, pp. 22-23.

⁹ *Id.* at 10-23.

Issues

The Court is now urged to determine whether accused-appellant's conviction for murder was proven beyond reasonable doubt.

Accused-appellant insists on the insufficiency of the allegation of treachery in the information against him. He argues there is an actual need for the State to specifically aver the factual circumstances or particular acts constituting the criminal conduct that qualifies or aggravates his liability for the crime. The element of treachery was also not proven as this was simply deduced from presumptions. Lastly, the courts erred when they failed to consider the mitigating circumstance of voluntary surrender.¹⁰

Ruling of the Court

The appeal is devoid of merit.

At the outset, the Court notes that accused-appellant does not question the consistent finding of him killing Jerson. The purpose of his appeal, as clearly stated in his prayer,¹¹ is to downgrade his conviction from murder to homicide, and to have the mitigating circumstance of voluntary surrender be appreciated in his favor. Hence, the Court's ruling will focus on these issues.

The Information against accused-appellant was defective. Nonetheless, accused-appellant has already waived his right to question said defect.

The Court, in the recent case of *People v. Solar*,¹² had definitively declared "it is insufficient for prosecutors to indicate in an Information that the act supposedly committed by the accused was done "with treachery" or "with abuse of superior strength" or "with evident premeditation" without specifically describing the acts done by the accused that made any or all of such circumstances present."

- over -

181-C

¹⁰ CA *rollo*, pp. 31-42.

¹¹ WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that the decision of the Regional Trial Court, Branch 36 of Carigara, Leyte dated March 31, 2016 be REVERSED and SET ASIDE, and that a new one be rendered CONVICTING accused-appellant of the lesser crime of HOMICIDE and the mitigating circumstance of voluntary surrender be appreciated in his favor. (Emphasis removed)

¹² G.R. No. 225595, 06 August 2019 [Per J. Caguioa].

In the present case, the Information against accused-appellant failed to state the ultimate facts illustrating the aggravating circumstances attendant to the crime as it merely used the general term “with treachery and evident premeditation.” Indeed, the nature and character of the crime charged are determined by the facts alleged in the indictment and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated. This is in keeping with the rule requiring a person of common understanding to know what offense is intended to be charged.¹³

Nonetheless, accused-appellant had already waived his right to question the defects in the Information. In the same case of *People v. Solar*, this Court ruled that failure of the accused to avail of any of the remedies available to assail the Information, *i.e.*, via a motion to quash or a bill of particulars, constitutes a waiver to question the defective statement of aggravating or qualifying circumstances in the Information.

Thus, as aptly stated by the CA, accused-appellant should have raised this issue prior to his arraignment by filing a motion to quash. Instead, accused-appellant voluntarily entered his plea during arraignment and proceeded with the trial. Thus, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the attendant circumstances.¹⁴

*Treachery attended the killing of
the victim*

Accused-appellant avers the prosecution failed to prove treachery as this was borne merely from a deduction of presumptions.

The Court does not agree.

Treachery is defined as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the

- over -

181-C

¹³ *People v. Delector*, G.R. No. 200026, 04 October 2017, 819 Phil. 310-325 (2017) [Per CJ. Bersamin].

¹⁴ *People v. Solar*, G.R. No. 225595, 06 August 2019 [Per J. Caguioa].

hapless, unarmed and unsuspecting victim no chance to resist or escape.¹⁵

Here, Jerson was just walking with Ervin Flores and a certain Edmar when a stone coming from behind hit him in the head causing him to stumble to the ground. While still slumped on the ground, accused-appellant stabbed him and hit the left side of his body. Jerson tried to turn around but accused-appellant stabbed him again, this time, hitting the abdominal part of his body. This caused Jerson to fall on his back. Meanwhile, accused-appellant even mounted himself on top of Jerson's body and delivered more blows, totally disabling the latter from putting up a defense. Clearly, Jerson was utterly unaware that such attack was coming and had no opportunity to defend himself. The assault was likewise executed in a methodical manner since accused-appellant made it certain he gave the fatal blows while Jerson was lying defenseless on the ground. The RTC and the CA were, thus, correct in appreciating the aggravating circumstance of treachery.

Voluntary surrender, as a mitigating circumstance, cannot be appreciated in accused-appellant's favor

As to the claim of accused-appellant that he is entitled to the mitigating circumstance of voluntary surrender, the same does not deserve merit. For voluntary surrender to be appreciated, the following requisites should be present: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority or the latter's agent; and (3) the surrender was voluntary. 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.¹⁶

In this case, there was no spontaneity on the part of accused-appellant. Rather than personally surrendering himself to the authorities, it was the police who sought him due to a stabbing incident report where he was tagged as the suspect. Accused-appellant's failure to resist apprehension and surrender of the weapon do not necessarily equate to voluntary surrender. The voluntariness of

- over -

181-C

¹⁵ *People v. Lagrita*, G.R. No. 233194, 14 September 2020 [Per CJ. Peralta].

¹⁶ *People v. Sabalberino*, G.R. No. 241088, 03 June 2019 [Per CJ. Peralta].

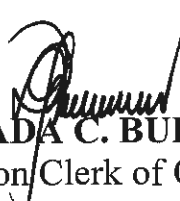
one's surrender should denote a positive act and not a mere compliant or submissive behavior in the presence of authorities.¹⁷

The Court, however, notes there is no need to qualify the penalty of *reclusion perpetua* with the phrase, "without eligibility for parole," pursuant to A.M. No. 15-08-02-SC.¹⁸ In the absence of any mitigating or aggravating circumstance, the proper penalty is *reclusion perpetua*. Likewise, the Court sustains the award of damages in line with our pronouncement in *People v. Juguetta*.¹⁹

WHEREFORE, the appeal is hereby **DISMISSED**. The Decision dated 17 December 2018 promulgated by the Court of Appeals in CA-G.R. CEB-CR HC No. 02314 is **AFFIRMED** with **MODIFICATION** that the sentence of *reclusion perpetua* need not be qualified with the phrase "without eligibility for parole."

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *12/2/20*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
181-C

- over -

¹⁷ *Id.*; see also *People v. Mercado*, G.R. No. 218702, 17 October 2018 [Per J. Caguioa].

¹⁸ Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, 04 August 2015.

¹⁹ G.R. No. 202124, 05 April 2016 [Per CJ. Peralta].



The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals
6000 Cebu City
(CA-G.R. CEB-CR HC No. 02314)

The Hon. Presiding Judge
Regional Trial Court, Branch 36
Carigara, 6529 Leyte
(Crim. Case No. 5103)

PUBLIC ATTORNEY'S OFFICE
Regional Special and Appealed
Cases Unit
Counsel for Accused-Appellant
3rd Floor, Taft Commercial Center
Metro Colon Carpark
Osmeña Boulevard, 6000 Cebu City

Mr. Alex S. Nidera
Accused-Appellant
c/o The Superintendent
Leyte Regional Prison
Abuyog, 6510 Southern Leyte

The Superintendent
Leyte Regional Prison
Abuyog, 6510 Southern Leyte

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181-C

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