



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 26, 2021** which reads as follows:*

“G.R. No. 202966 – (FRITZ TUSALEM, *petitioner* v. PEOPLE OF THE PHILIPPINES, *respondent*). – This petition assails the Decision¹ dated October 19, 2011 whereby the Court of Appeals (CA)-Cebu City in CA-G.R. CR No. 00412 affirmed with modification the Decision dated November 29, 2005 of the Regional Trial Court (RTC), Branch 65 of San Miguel, Jordan, Guimaras, in Criminal Case No. 0744, finding Fritz Tusalem (*petitioner*) guilty beyond reasonable doubt of the crime of homicide.

Petitioner, together with co-accused Reagan Tan, Kenny Tusalem, Indisfare Tan, Leo Severino Galvez and Dominador Delfin were charged with murder in an Information² dated January 27, 2003 which reads:

That on or about the 24th day of June 2002, at the municipality of Sibunag, Province of Guimaras, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, helping one another, confederating with each other, with treachery and with the use of superior strength, did then and there willfully, unlawfully and feloniously box and kick one Dan John Infante repeatedly hitting him on his head and different parts of the body which caused his death.³

Upon arraignment, except for Dominador Delfin who remained at large,⁴ all the accused pleaded not guilty to the offense charged. Thereafter, trial on the merits ensued.

- over – ten (10) pages ...

198-B

¹ *Rollo*, pp. 22-39; penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles.

² *Id.* at 23.

³ *Id.* at 24.

⁴ *Id.* at 23.

According to the prosecution, brothers Dan John and Dan Niel Infante are residents of Barangay Alibhon in Jordan, Guimaras, Iloilo City.⁵ On June 24, 2002, the brothers went to Barangay Sabang in Sibunag, Guimaras, to celebrate the feast day of St. John the Baptist.⁶ As Barangay Sabang is only around 30 minutes away from their house, the brothers left on a motorcycle and arrived at their destination at around 8:00 or 9:00 o'clock in the morning that day. They went straight to the house of their uncle and met with Wencie Zaldivar (Wencie), and a certain Norberto and Inday. The group then left for the Islet of Us-usan where they stayed until 3:00 o'clock in the afternoon.

When the group went back to Barangay Sabang, Dan Niel decided to go to the "coop" store which was only 30 meters away from the shore. The others, on the other hand, remained at the beach. At the store, Dan Niel saw accused Kenny and Indisfare who allegedly asked him to drink with them. Dan Niel, however, declined saying that he had to rinse off.⁷

After a while, Dan John also arrived at the store but he went back to the seashore with Wencie and Norberto to get his sandals which he left on the pump boat.⁸ It was there where they met petitioner who told the three to leave.⁹ When Dan John and his companions refused, petitioner allegedly boxed Dan John causing him to fall on the ground.¹⁰ Petitioner then kicked Dan John.¹¹ After a while, Kenny, Indisfare, Reagan, Leo and Dominador arrived and they, too, allegedly joined in mauling the victim.¹² When Dan Niel arrived at the scene, he tried to help his brother but Dominador and petitioner also boxed him.

The fray continued until some barangay officials came and pacified the group.¹³ After which, Dan Niel and Dan John went to their uncle's house, then later went back home to Barangay Alibhon. That night, Dan John started to writhe in pain and became visibly sick.¹⁴ As it was very late already, Dan John opted not to go to the hospital.

The following day, Dan John was brought by his grandmother to Guimaras Provincial Hospital. Upon examination made by Dr. Ma. Joann Jardeleza (Dr. Jardeleza), it was found that Dan John was

- over -

198-B

⁵ Id. at 24.
⁶ Id.
⁷ Id.
⁸ Id.
⁹ Id.
¹⁰ Id.
¹¹ Id.
¹² Id.
¹³ Id. at 25.
¹⁴ Id.

walking and had spontaneous verbal response.¹⁵ However, it was also found that he had an abrasion at the left flank approximately two centimeters in length and a positive scratch mark on the left shoulder in deltoid linear appearance.¹⁶ After Dr. Jardeleza prescribed him some antibiotic and pain reliever, she advised Dan John to come back for another checkup after seven days should he feel abdominal and body pains.¹⁷

In the afternoon of the same day, Dan John went with his father to the police station to report the mauling incident.¹⁸ However, they were told to go first to the Barangay Captain for indorsement. When they went to the Barangay Captain, they were informed that the latter was not around and were told to schedule an appointment.

Hence, Dan John only stayed at home thereafter as he was feeling weak.¹⁹ Even when days have passed, Dan John was still not feeling well. He even tried to play basketball with Wencie but according to the latter's testimony, Dan John was still very weak and could not move a lot.²⁰

On June 30, 2002, Dan John started to vomit yellowish and odorous substance²¹ and suffered greatly from stomach pains. Because of this, he was brought to Guimaras Provincial Hospital but he was pronounced dead on arrival.²² Dr. Gabrielito Sabihon (Dr. Sabihon), the attending physician, said that upon Dan John's arrival at the hospital, he had zero blood pressure, heart rate and respiratory rate.²³ His temperature which was 35 degrees Celsius was suggestive that he was already on hypothermia stage.²⁴ When Dr. Sabihon learned that Dan John was involved in a mauling incident a few days before, he suggested that Dan John's body be subjected to medico-legal examination to determine the cause of his death.

Dr. Owen Jaen Lebaquin (Dr. Lebaquin), the Medico-Legal Officer of the Philippine National Police-Region VI who conducted an autopsy upon the cadaver of Dan John on July 1, 2002, declared that Dan John's death was caused by cardiorespiratory arrest due to shock

- over -

198-B

¹⁵ Id.
¹⁶ Id.
¹⁷ Id.
¹⁸ Id.
¹⁹ Id. at 26.
²⁰ Id.
²¹ Id. at 16.
²² Id. at 26.
²³ Id.
²⁴ Id.

and hemorrhage resulting from traumatic injuries of the head, right kidney, gall bladder and spleen.²⁵ According to him, the injuries could have been caused by a hard blunt object caused by one or several persons.²⁶ He further explained that while the injury in the victim's kidneys could not cause so much pain to the victim, the injuries, however, in his gall bladder and spleen could give so much pain. He also said that the injuries sustained in Dan John's head and gall bladder were fatal which could have also been the cause of the latter's death.²⁷

Thus, Dan John's parents filed a complaint for murder against petitioner, Reagan Tan, Kenny Tusalem, Indisfare Tan, Leo Severino Galvez and Dominador Delfin for the death of Dan John.

After weighing the parties' respective arguments and evidence, the RTC rendered a Decision on November 29, 2005, finding that there was no sufficient evidence to prove conspiracy among the accused in the mauling of Dan John. The RTC likewise found that the prosecution failed to prove the existence of the qualifying circumstances of treachery and abuse of superior strength. It, however, took note of the fact that it was petitioner who boxed and kicked Dan John as even the petitioner's brother and co-accused, Kenny, pointed to him as the one involved in the mauling of Dan John.²⁸

Hence, based on this finding, the RTC acquitted Reagan Tan, Kenny Tusalem, Indisfare Tan and Leo Severino Galvez. As to petitioner, on the other hand, the RTC found him guilty beyond reasonable doubt of the crime of homicide. The RTC decreed:

WHEREFORE, premises considered, judgment is rendered finding accused Fritz Tusalem GUILTY beyond reasonable doubt of the crime of HOMICIDE defined and penalized under Article 249 of the Revised Penal Code.

Accused Reagan Tan, Kenny Tusalem, Indisfare Tan and Leo Severino Galvez are ACQUITTED of the crime charged for failure of the prosecution to prove the guilt of the said accused beyond reasonable doubt.

There being no mitigating and aggravating circumstances and applying the Indeterminate Sentence Law, accused Fritz Tusalem is hereby sentenced to suffer a penalty of imprisonment of Nine (9) years of prision mayor to Fifteen (15) years of reclusion temporal together with all accessory penalties attached thereto.

- over -

198-B

²⁵ Id.
²⁶ Id.
²⁷ Id.
²⁸ Id. at 27.

The bail bond posted by all the accused are cancelled.

Accused Fritz Tusalem is ordered arrested.

Accused Fritz Tusalem is also ordered to pay the heirs of Dan John Infante the amount of P80,000.00 broken as follows:

P50,000.00 – for the death of Dan John Infante
30,000.00 – as Attorney's fees

P80,000.00

SO ORDERED.²⁹

On appeal, the CA affirmed the Decision of the RTC finding herein petitioner guilty of homicide. It also did not give credit to the petitioner's assertions that he should only be held liable for reckless imprudence resulting in homicide, and agreed with the RTC that the elements of homicide are present in the case. However, it modified the amount of indemnities imposed by the RTC, thus:

WHEREFORE, premises considered, the appeal is hereby DENIED and the Decision, dated 29 November 2005, of the RTC San Miguel, Jordan, Guimaras, Branch 65 relative to Criminal Case No. 0744 is AFFIRMED with MODIFICATIONS as to the damages awarded. Aside from the P50,000.00 as civil indemnity and the P30,000.00 as attorney's fees awarded by the trial court, accused-appellant is ORDERED to pay the heirs of the victim, Dan John Infante, the amounts of P50,000.00 as moral damages and P25,000.00 as temperate damages.

The bail posted by accused-appellant is hereby CANCELLED. Consequently, the RTC San Miguel, Jordan, Guimaras, Branch 65 is ORDERED to issue a warrant for his arrest.

SO ORDERED.³⁰

Now, before the Court, petitioner reiterates his stance that he did not cause the death of the victim, Dan John. He argues that if the victim, indeed, suffered from so many blows, he should have been brought immediately to the hospital.³¹ Instead, victim was even able to travel the day following the incident which, according to him, was an hour of bumpy drive on a rough road.³² He also points that the victim had no other medical complaints when seen by Dr. Jardeleza the next

- over -

198-B

²⁹ Id. at 22-23.

³⁰ Id. at 38.

³¹ Id. at 15.

³² Id. at 16.

day and that based on the latter's testimony, the victim was even walking and in good condition at the time the physical examination was conducted upon him.³³ Likewise, petitioner takes issue on the matter of the yellowish and odorous substance that the victim vomited which, according to him, creates a reasonable doubt as to the causal connection of the mauling incident to the death of the victim.³⁴ Lastly, petitioner banks on the testimony of Wencie that he did not see the petitioner use any instrument or object during the mauling incident which thus belies the theory made by the medico-legal officer that the injury could have been caused by using a "hard blunt object".³⁵

The Court affirms the petitioner's conviction.

Criminal liability is incurred when a person committed a felony although the wrongful act done is different from that which was intended. Article 4 of the Revised Penal Code is quite clear on this matter.

Article 4. 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.

x x x x

Unfortunately for the petitioner, the prosecution was not only able to establish the fact that the victim was mauled on June 24, 2002, and died on June 30, 2002, but the witnesses were also able to positively identify him as the one involved in the mauling of Dan John. In fact, even his own brother and co-accused, Kenny Tusalem, pointed at him as the one who mauled the victim.³⁶

Further, a careful study of the facts as presented by the prosecution leads the Court to believe that no other supervening event took place from June 24, 2002, until the day the victim died on June 30, 2002. Clearly, the absence of such event, which may have possibly altered the outcome of the prior mauling incident, coupled by the findings of the medico-legal who performed an autopsy on the cadaver of Dan John that the victim suffered from traumatic injuries and that he had internal hemorrhage after he was mauled, only indicate that the mauling incident was the proximate cause of the victim's death.

- over -

198-B

³³ Id.

³⁴ Id.

³⁵ Id. at 18.

³⁶ Id. at 27.

Dr. Lebaquin testified:

Q: Now, in this Medico Legal Report, Doctor, you also placed here in your conclusion marked now as Exhibit "C-2" which I quote, Cause of Death is Cardiorespiratory arrest due to shock and Hemorrhage as a result of traumatic injuries of the head, right kidney, gall bladder and spleen" Now, Doctor, could you please explain in layman's term this cause which you said due to shock and hemorrhage due to traumatic injuries?

A: The cause of Death is the stoppage of the heart and respiratory function as a result of blood loss; due to traumatic injuries on the head which is noted upon opening of the head and also injuries noted at the right kidney and the gall bladder upon opening of the stomach of the victim or the abdominal organ.

Q: Could you say, Doctor, in layman terms if there was an internal hemorrhage?

A: Yes, sir.

Q: As you said traumatic injuries you mean to say more than one injuries suffered by the victim?

A: Yes sir.

Q: Could you estimate how many injuries?

A: Injuries – internal at the head, the kidney[,] the gall bladder and also the spleen.

Q: And you said a while ago that this was caused by [a] hard blunt object?

A: Possibly.

Q: How about sharp object? Could it be caused by [a] sharp object?

A: The victim has sustained no wound or injury caused by [a] sharp object.

Q: Could it be caused by only one person?

A: Yes, sir. He is large or bigger than the victim. The victim is around 159 pounds.

Q: But could you inform Doctor[,] the Honorable Court that it would be caused by several persons?

A: Yes, it is possible.³⁷

From the foregoing declaration of Dr. Lebaquin, it can only be concluded that it is the petitioner's act of mauling Dan John which was the proximate cause of the latter's death.

- over -

198-B

³⁷ Id. at 31-32.

Indeed, proximate cause is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.³⁸

The CA has this to say:

From the above-quoted exchanges, there is no dispute that there was a causal relationship between the mauling of Dan John by accused-appellant and his consequent death. For such causal relationship to be established, “there must be relation of ‘cause and effect’, the cause being the felonious act of the offender, the effect being the resultant injuries and/or death of the victim.” Clearly, the cause and effect between the two incidents were sufficiently proved by the prosecution. Dan John’s death was the direct consequence of the accused-appellant’s felonious act of mauling Dan John, albeit, only after several days.³⁹

Moreover, it is already a well-settled rule that if the victim dies because of a deliberate act of the malefactors, intent to kill is conclusively presumed.⁴⁰ Thus, even if there was no intent to kill, the crime is homicide because with respect to crimes of personal violence, the penal law looks particularly at the material results following the unlawful act and holds the aggressor responsible for all the consequences thereof.⁴¹

Homicide is defined and penalized under Article 249 of the Revised Penal Code, to wit:

Art. 249. *Homicide*. - Any person who, not falling within the provisions of Article 246, shall kill another, without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

Likewise, the elements of homicide are present in this case. These are: (a) a person was killed; (b) the accused killed him without any justifying circumstance; (c) the accused had the intention to kill, which is presumed; and (d) the killing was not attended by any of the qualifying circumstances of Murder, or by that of Parricide or Infanticide.⁴² With these attendant elements, there is no doubt that petitioner is liable for homicide for the death of Dan John.

- over -

198-B

³⁸ *Mendoza, et al. v. Spouses Gomez*, 736 Phil. 460, 475 (2014).

³⁹ *Rollo*, p. 35.

⁴⁰ *Wacoy v. People*, 761 Phil. 570, 579-580 (2015).

⁴¹ *Id.*

⁴² *Villanueva, et al. v. Caparas*, 702 Phil. 609, 616 (2013).

From the foregoing, the Court resolves to dismiss the petition for failure to sufficiently show any reversible error in the herein assailed Decision to warrant the exercise of its appellate jurisdiction.

However, following the Court's ruling in *People v. Jugueta*,⁴³ the Court modifies the amount of damages imposed in the assailed CA Decision.

WHEREFORE, the Court **ADOPTS** and **AFFIRMS** the factual findings and conclusions of law in the Decision dated October 19, 2011 of the Court of Appeals in CA-G.R. CR No. 00412 insofar as it found petitioner Fritz Tusalem **GUILTY** beyond reasonable doubt of the crime of homicide as defined and penalized under Article 249 of the Revised Penal Code; **SUBJECT TO THE MODIFICATION** in that herein petitioner shall pay the heirs of the victim the following amounts of damages: (a) ₱50,000.00 as civil indemnity and ₱30,000 as attorney's fees as awarded by the trial court; (b) ₱50,000.00 as moral damages, and (c) ₱50,000.00 as temperate damages. The total amount due shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until the full satisfaction thereof.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
198-B

- over -

⁴³ 783 Phil. 806 (2016).



VALENZUELA MONSERATE
ALQUISADA & ASSOCIATES
Counsel for Petitioner
2/F, Magdalena Center
MLL Building, JM Basa Street
5000 Iloilo City

Court of Appeals
6000 Cebu City
(CA-G.R. CR No. 00412)

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

The Hon. Presiding Judge
Regional Trial Court, Branch 65
San Miguel, Jordan, 5045 Guimaras
(Crim. Case No. 0744)

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Judgment Division (x)
Supreme Court



198-B

UR

NAF