



Republic of the Philippines  
Supreme Court  
Manila

SPECIAL FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 197252

- versus -

Present:

NESTOR DE ATRAS y ELLA, *et al.*,  
Accused; WENLITO DEPILO y  
BIORCO @ "WEWEN" and  
LOLITO DEPILO y DEHIJIDO @  
"LITO",

PERLAS-BERNABE, S.A.J.,  
Chairperson,  
CAGUIOA,  
CARANDANG,  
LAZARO-JAVIER, and  
GAERLAN, JJ.

Accused-Appellants.

Promulgated:

JUN 23 2021

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RESOLUTION

PERLAS-BERNABE, J.:

In a Resolution<sup>1</sup> dated June 15, 2016, the Court affirmed with modification the Decision<sup>2</sup> dated October 28, 2010 of the Court of Appeals (CA) in C.A.-G.R. CEB C.R. H.C. No. 00889 finding accused-appellants Wenlito Depillo y Biorco @ "Wewen" (Wenlito) and Lolito Depillo y Dehijido @ "Lito" (Lolito; collectively, accused-appellants) guilty beyond reasonable doubt of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, the dispositive portion of the said Resolution reads:

<sup>1</sup> Rollo, pp. 64-70. Signed by then Division Clerk of Court (now retired *En Banc* Clerk of Court) Edgar O. Aricheta.

<sup>2</sup> Id. at 3-13. Penned by Associate Justice Edwin D. Sorongon with Executive Justice Portia A. Hormachuelos and Associate Justice Socorro B. Inting, concurring.

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**WHEREFORE**, the Court **AFFIRMS** the decision promulgated on October 28, 2010 subject to the **MODIFICATIONS** that accused-appellants **WENLITO DEPILLO y BIORCO @ WEWEN** and **LOLITO DEPILLO y DEHIJIDO @ LITO** shall pay to the Heirs of Anatolio Calumba, Jr. the amounts of ₱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, with interest of 6% *per annum* on each item of the civil liability reckoned from the date of finality of this Resolution until fully paid; and **ORDERS** them to further pay the costs of suit.

**SO ORDERED.**<sup>3</sup>

However, it appears that Lolito died on March 16, 2015, as evidenced by a Letter<sup>4</sup> dated August 24, 2016 from the Bureau of Corrections and the Certificate of Death<sup>5</sup> attached thereto. Notably, this means that Lolito had passed away during the pendency of the criminal case against him, since the same was resolved by the Court only through the aforesaid Resolution dated June 15, 2016, which attained finality on February 27, 2017, but only insofar as Wenlito is concerned.<sup>6</sup>

Under prevailing law and jurisprudence, Lolito's death prior to his final conviction by the Court should have resulted in the dismissal of the criminal case against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused, to wit:

Article 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

Likewise, the civil action instituted for the recovery of the civil liability *ex delicto* is also *ipso facto* extinguished, as it is grounded on the criminal action. The rationale behind this rule is that upon an accused-appellant's death pending appeal of his conviction, the criminal action is deemed extinguished inasmuch as there is no longer a defendant to stand as the accused.<sup>7</sup>

Nonetheless, the Court clarified in *People v. Santiago*<sup>8</sup> that in such an instance, the accused's civil liability in connection with his acts against the victim may be based on sources other than delicts; in which case, the victim may file a separate civil action against the accused's estate, as may be warranted by law and procedural rules, *viz.*:

<sup>3</sup> Id. at 69.

<sup>4</sup> Id. at 61. Signed by P/Supt. I Roberto R. Rabo and received by the Court on August 31, 2016.

<sup>5</sup> Id. at 62-63. Signed by Medical Officer III Benevito A. Fontanilla, M.D.

<sup>6</sup> See Entry of Judgment; id. at 86-87. Signed by Deputy Clerk of Court and Chief Judicial Records Officer Basilia T. Ringol.

<sup>7</sup> See *People v. Santiago*, G.R. No. 228819, July 24, 2019, citing *People v. Culas*, 810 Phil. 205, 209 (2017).

<sup>8</sup> Id.

From this lengthy disquisition, we summarize our ruling herein:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability[,] as well as the civil liability[,] based solely thereon. As opined by Justice Regalado, in this regard, “the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto in senso strictiore*.”

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

- a) Law
- b) Contracts
- c) Quasi-contracts
- d) x x x
- e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure[,] as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.<sup>9</sup>

Therefore, had the Court been timely made aware of Lolito’s supervening death in the interim, his conviction would not have been affirmed as his criminal liability and civil liability *ex delicto* in connection therewith had already been extinguished. Given the foregoing, while the Court acknowledges that the Resolution dated June 15, 2016 affirming Lolito’s criminal and civil liabilities had already attained finality, and hence, covered by the doctrine on immutability of judgments, the Court deems it apt to rectify the situation by modifying the said Resolution. In *People v. Layag*,<sup>10</sup> the Court explained that it has the power to relax the doctrine of immutability of judgment if, *inter alia*, there exists special or compelling circumstances therefor, as in this case, when

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<sup>9</sup> *Id.*

<sup>10</sup> 797 Phil. 386 (2016).

the Court was belatedly informed of Lolito's supervening death pending his appeal:

Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down, Nonetheless, the immutability of final judgments is not a hard and fast rule as the Court has the power and prerogative to relax the same in order to serve the demands of substantial justice considering: (a) matters of life, liberty, honor, or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) the lack of any showing that the review sought is merely frivolous and dilatory; and (f) that the other party will not be unjustly prejudiced thereby.<sup>11</sup> (Emphases and underscoring in the original)

Finding the aforesaid exception to be applicable, the Court therefore sets aside its Resolution dated June 15, 2016 and consequently, dismisses Criminal Case No. 03-63-A before the Regional Trial Court of Bais City, Negros Oriental, Branch 45 as against Lolito by reason of his supervening death prior to his final conviction.

**WHEREFORE**, the Court resolves to: (a) **SET ASIDE** the Court's Resolution dated June 15, 2016 insofar as accused-appellant Lolito Depillo y Dehijido @ "Lito" is concerned; (b) **DISMISS** Criminal Case No. 03-63-A before the Regional Trial Court of Bais City, Negros Oriental, Branch 45 only as against accused-appellant Lolito Depillo y Dehijido @ "Lito" by reason of his supervening death prior to his final conviction; and (c) **DECLARE** this case **CLOSED** and **TERMINATED** as to him. No costs.

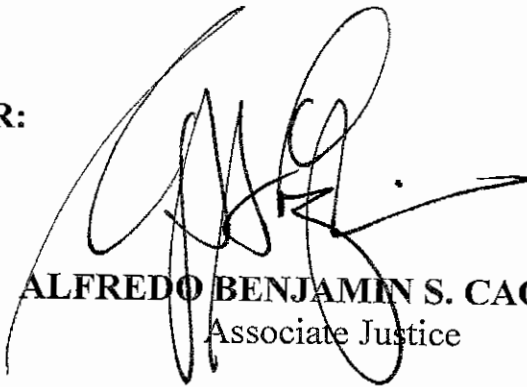
**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

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<sup>11</sup> Id. at 389.


**WE CONCUR:**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ROSMARI D. CARANDANG**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice



**SAMUEL H. GAERLAN**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ALEXANDER G. GESMUNDO**  
Chief Justice

