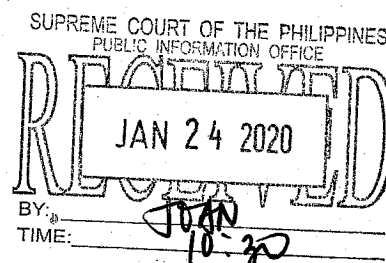




Republic of the Philippines  
Supreme Court  
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated November 28, 2019 which reads as follows:*

**“G.R. No. 225063– (People of the Philippines vs. Angel Julio y Mater)**

This appeal assails the Decision<sup>1</sup> dated June 29, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06706 affirming the trial court’s verdict of conviction for murder against appellant Angel Mater Julio alias “Bogel.”

***The Facts and the Plea***

By Information dated August 16, 2010, appellant was charged with murder for the death of Edwin Santiago Miranda, *viz.*:

That on or about the 1st day of October (sic) 2012, in the City of Las Piñas, Philippines, and within [the] jurisdiction of the Honorable Court, the above-named accused, without justifiable motive, with intent to kill, and with treachery, evident premeditation, and use of superior strength, did, then and there, willfully, unlawfully, and feloniously attack, assault, and use personal violence upon one EDWIN SANTIAGO MIRANDA, by then and there stabbing him for several times on the different parts of his body, thereby inflicting upon the latter mortal stab wounds which directly caused his death.

CONTRARY TO LAW.<sup>2</sup>

<sup>1</sup> Penned by Associate Justice Normandie B. Pizarro concurred in by Associate Justice Eduardo B. Peralta, Jr., and Associate Justice Ma. Luisa C. Quijano-Padilla, *Rollo*, p. 2.

<sup>2</sup> *Id.* at 3.

The case was raffled to the Regional Trial Court-Branch 275, Las Piñas City. On arraignment, appellant pleaded not guilty.<sup>3</sup> During pre-trial, the parties stipulated on the following: (1) the jurisdiction of the court; (2) the identity of accused-appellant; (3) if SPO1 Edwin Amutan and PO3 Mark Tino were placed on the witness stand, they will testify in accordance with their Investigation Report; (4) if Manolito Lagahit, Cesario Loazada, and PO1 Rodel Buenaventura were placed on the witness stand, they will testify in accordance with their *Pinagsamang Sinumpaang Salaysay ng Pag-aresto*; and (5) if Dr. Roberto Rey San Diego was placed on the witness stand, he will testify in accordance with Edwin's Certificate of Death and Certificate of Post-Mortem Examination.<sup>4</sup>

During the trial, the parties further stipulated on the expenses incurred by the victim's family for his wake and burial which amounted to ₱142,263.00.

#### ***Version of the Prosecution***

**Dante Santos** testified that on October 1, 2012, around 11:30 in the evening, he was the supervisor on duty at the Padrino's Bar and Restaurant, Las Piñas City. There, the victim Edwin Santiago Miranda and his friends were having a drinking spree. Appellant and his friends were seated on the next table, having their own drinking spree, as well.<sup>5</sup>

Edwin who then already appeared drunk, insulted the disc jockey (DJ) while browsing the song book. Appellant suddenly blurted that Edwin had punched the DJ. Edwin then turned to appellant and insulted the latter too. Appellant got enraged and started throwing bottles and glasses in the bar. He (Dante) tried to calm down the two (2), after which he escorted appellant out.<sup>6</sup>

Outside, appellant lingered on for a few more minutes before he eventually left. But only after around fifteen (15) minutes, appellant came back this time, armed with a knife. Appellant headed straight to Edwin who saw appellant walking up to him, exclaiming "*Patay ka ngayon.*" Edwin tried to parry appellant's stabbing thrust but failed. Appellant hit Edwin straight in the chest. When Edwin managed to stand up, appellant stabbed him another time, shouting "*Mamatay ka na.*" After dealing the second blow, appellant walked out. He (Dante)

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<sup>3</sup> Id. at 4.

<sup>4</sup> Id.

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

<sup>6</sup> Id.

clearly saw the incident since he was only about three (3) meters away from the two (2) protagonists.<sup>7</sup>

PO1 Rodel Buenaventura together with Barangay Tanods Manolito Lagahit and Cesario Loazada, responded to the incident and scoured the area to track down appellant whom they eventually sighted in an alley. Right there and then, PO1 Buenaventura arrested appellant.<sup>8</sup>

Meanwhile, Edwin was rushed to the Las Piñas District Hospital then to the Pasig General Hospital where he died.<sup>9</sup>

The prosecution offered in evidence the Investigation Report, *Sinumpaang Salaysay* of Pastor Miranda (father of Edwin), *Sinumpaang Salaysay* of Dante Santos, *Pinagsamang Sinumpaang Salaysay ng Pag-aresto* of PO1 Buenaventura and barangay tanods Lagahit and Loazada, Death Certificate of Edwin, Certificate of Post-mortem Examination, photographs of the victim, and list of expenses.<sup>10</sup>

#### *Version of the Defense*

Appellant testified that on October 1, 2012, he celebrated his sixtieth (60<sup>th</sup>) birthday with his *compadres* at his nephew's house which is about a five (5) to ten (10)-minute walk from Padrino's. They had already consumed two (2) big bottles of Emperador Light before they proceeded to the Padrino's Bar for their singing spree. There, he saw Edwin holding the microphone. He knew Edwin had the habit of teasing and mocking him whenever he and his grandchildren pass by Edwin's house. So to avoid any contact with Edwin that night, he chose a table for him and his friends that was not too close to Edwin's.<sup>11</sup>

That evening, he consumed three (3) to four (4) bottles of San Miguel Light. Later in the night, Edwin approached their table and asked Ed Reyes to sing. Ed obliged. After his number, Ed returned the microphone to Edwin. Then, he (appellant) asked Edwin if he, too, could sing. Edwin replied, "*Huwag ka nang kumanta,*" then cursed "*putang ina mo!*" and broke a bottle of beer. He stood up but passed

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<sup>7</sup> *Id.* at 5-6.

<sup>8</sup> *Id.* at 6.

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

<sup>10</sup> CA Rollo, p. 37.

<sup>11</sup> Rollo, p. 7.

out due to intoxication. The next thing he remembered, he was in an alley about twenty (20) to twenty-five (25) meters away from the bar, confessing to his brother Nemencio Julio that he may have done something wrong. The police shortly arrived and handcuffed him.<sup>12</sup>

### **The Trial Court's Decision**

By Decision<sup>13</sup> dated January 30, 2014, the trial court rendered a verdict of conviction, thus:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused ANGEL MATER JULIO @ BOGEL GUILTY beyond reasonable doubt of the crime of murder and he is hereby sentenced to suffer the penalty of reclusion perpetua. Accused is further ordered to pay the heirs of the deceased Edwin Santiago Miranda the sums of ₱75,000[.00] as civil indemnity, ₱50,000[.00] as moral damages, ₱30,000[.00] as exemplary damages, and ₱142,263.00 (as) actual damages.

SO ORDERED.<sup>14</sup>

The trial court found Dante's testimony to be consistent and categorical when he identified appellant as the one who slayed Edwin. It further appreciated treachery to have attended the killing. It concluded that appellant's sudden and unexpected attack gave no opportunity for Edwin to repel it or defend himself.

As for evident premeditation, the trial court ruled that a fifteen (15) minute gap from the time appellant got escorted out of the bar until he came back was too short a time for him to have meditated or reflected upon his decision to slay his foe. It also did not consider abuse of superior strength as attendant circumstance.<sup>15</sup>

### **The Proceedings before the Court of Appeals**

On appeal, appellant faulted the trial court for rendering the verdict of conviction despite Dante's alleged failure to positively identify him as the assailant. Dante's attention could not have been entirely focused on him since there were other customers present in the bar that night. Also, Dante could not have possibly witnessed the actual stabbing itself amidst the commotion and confusion that ensued.<sup>16</sup>

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<sup>12</sup> Id.

<sup>13</sup> CA Rollo, pp. 36-41.

<sup>14</sup> Id. at 41.

<sup>15</sup> Id. at 39-40.

<sup>16</sup> Id. at 27.

Appellant further faulted the trial court for appreciating the qualifying circumstance of treachery. According to the trial court, suddenness of the attack alone here did not equate to treachery. More, Edwin's heated altercation with appellant which preceded the stabbing incident should have already sufficiently alerted Edwin about appellant's possible reprisal.<sup>17</sup>

On the other hand, the Office of the Solicitor General (OSG) through State Solicitor Carlos G. Reynes countered that the prosecution had sufficiently established that treachery attended the killing of Edwin.<sup>18</sup>

### **The Court of Appeals' Ruling**

The Court of Appeals affirmed through its assailed Decision dated June 29, 2015. It held that the totality of the prosecution's evidence specifically Dante's eyewitness account pointed to only one conclusion, *i.e.* -- appellant's sudden and unexpected attack on Edwin amounted to treachery which qualified the killing to murder.

### **The Present Appeal**

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated July 27, 2016,<sup>19</sup> both appellant<sup>20</sup> and the OSG<sup>21</sup> manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

### **Issue**

Did the Court of Appeals err in affirming appellant's conviction for murder?

### **Ruling**

Murder is defined and penalized under Article 248 of the Revised Penal Code, *viz*:

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 temporal* in its maximum period to death, if

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<sup>17</sup> *Id.* at 32.

<sup>18</sup> *Id.* at 72.

<sup>19</sup> *Id.* at 20.

<sup>20</sup> *Id.* at 25-27.

<sup>21</sup> *Id.* at 22-24.

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.

x x x x

5. With evident premeditation

It requires the following elements: (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 248 of the Revised Penal Code; and (4) the killing does not amount to parricide or infanticide.<sup>22</sup>

Here, appellant vigorously disclaims the presence of the second and third elements.

***Second Element:  
Appellant was positively identified  
as the victim's assailant***

Prosecution eyewitness Dante testified that after he escorted appellant out of the bar, the latter lingered on a few more minutes before he finally left for home. Appellant though returned fifteen (15) minutes later, headed straight to, and stabbed Edwin in the chest, uttering "*Patay ka ngayon.*" Although Edwin tried to parry the blow, he did not succeed. And when Edwin stood up, appellant stabbed him again blurting "*Mamatay ka na.*"

Appellant, nevertheless, attacks Dante's testimony on two (2) grounds: first, Dante could not have been entirely focused on him since there were other customers present in the bar that night; and second, the commotion caused by the stabbing incident would have led to confusion, making it difficult, if not impossible for Dante to have witnessed the stabbing incident.

The argument does not persuade.

To start off, appellant has not categorically denied the accusation that it was he who killed Edwin. All he said was he passed out and the next thing he remembered was he was in an alley confessing to his brother that he may have done something wrong.

<sup>22</sup> See *People v. Saltarin y Talosig*, G.R. No. 223715, June 3, 2019.

This statement is at best equivocal. Taken in light of Dante's positive identification of appellant as the one who slayed Edwin, appellant's statement equates to an admission of guilt.

Be that as it may, records show that even in the midst of commotion and confusion, Dante did see up close the stabbing incident involving the two (2) protagonists since he was only about three (3) meters away when it all happened. Notably, he was already familiar with both appellant and Edwin because he tried to pacify them earlier during their heated altercation inside the bar. Thereafter, he even escorted appellant out. Further, Dante was not shown to have been impelled by any ulterior motive to falsely testify against appellant on such heinous crime as murder. More important, both the trial court and the Court of Appeals gave credence to Dante's straightforward and consistent eyewitness account. Indeed, when the credibility of a witness is in issue, the trial court's factual findings, calibration of the testimonies, and assessment of the probative weight thereof, as well as its conclusions anchored thereon are accorded the highest respect if not conclusiveness. Especially, when such findings carried the full concurrence of the appellate court, as in this case.<sup>23</sup>

On this score, both the trial court and the Court of Appeals correctly concluded that appellant's bare denial cannot prevail over his positive identification by the prosecution eyewitness Dante. Denial, if not substantiated by clear and convincing evidence, is a negative and self-serving defense which carries no greater evidentiary value than the declaration of a credible witness upon affirmative matters. The Court has invariably held that denial, to be credited, must rest on strong evidence of non-culpability on the part of the accused which is glaringly absent here.<sup>24</sup>

***Third element:  
Treachery did not attend  
the killing***

At the outset, while the Information here alleged that treachery attended the killing of Edwin, it did not, however, aver the particular acts and circumstances constituting treachery in violation of Section 9, Rule 110 of the Rules of Court, viz.:

SECTION 9. *Cause of the Accusation.* — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but

<sup>23</sup> See *Decasa v. Court of Appeals*, 554 Phil. 160, 180 (2007).

<sup>24</sup> See *People v. Petalino*, G.R. No. 213222, September 24, 2018.

in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.  
(9a)

Surely, the mere mention of the word *treachery*, without more, is nothing but a conclusion of law, not an averment of fact.<sup>25</sup>

In any event, failure to allege the factual circumstances required in the Information is a ground for a motion to quash under Section 3 (e), Rule 117 of the Rules of Court:

SECTION 3. *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:

xxxx

(e) That it does not conform substantially to the prescribed form;

xxxx

Too, a motion for bill of particulars<sup>26</sup> would have been proper to address the insufficiency of the allegations in the Information. As it was though, appellant never filed a motion to quash or a motion for a bill of particulars on this ground. Consequently, he is deemed to have waived the same.

In *People v. Solar*,<sup>27</sup> the Court modified appellant's conviction from Homicide to Murder for failure to raise the insufficiency of the information by either filing a motion to quash for failure of the information to conform substantially to the prescribed form or by filing a motion for bill of particulars. Thus, he was deemed to have waived the defects in the Information.

The Court, therefore, now goes into the evidence on record to determine whether treachery did attend the killing here.

Treachery is present when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the

<sup>25</sup> See *People v. Valdez*, 679 Phil. 279, 294 (2012).

<sup>26</sup> **RULE 12. Bill of Particulars. Section 1.** *When applied for; purpose.* — Before responding to a pleading, a party may move for a definite statement or for a bill of particulars of any matter which is not averted with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading. If the pleading is a reply, the motion must be filed within ten (10) days from service thereof. Such motion shall point out the defects complained of, the paragraphs wherein they are contained, and the details desired.

<sup>27</sup> See *People v. Solar*, G.R. No. 225595, August 6, 2019.



offended party might make.<sup>28</sup> In fine, the elements of treachery are: (a) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate; and, (b) said means of execution were deliberately or consciously adopted.<sup>29</sup> These elements are both absent here.

Here, appellant's attack on Edwin was not unexpected at all. It was preceded by their heated verbal altercation early on inside the bar. Appellant also threw bottles and glasses inside the bar. These preceding incidents should have already alerted Edwin that his life was at risk in the hands of this violent and enraged man right there and then or anytime soon. Notably, when appellant walked back into the bar, Edwin was facing appellant's direction and actually saw appellant arrive with a knife heading straight to him. This is precisely the reason why Edwin was able to move to parry appellant's attack although Edwin did not succeed. This simply goes to show that when appellant suddenly launched his attack on Edwin, the latter was not totally defenseless, nay unable to defend himself or evade the attack on his person. Surely, there is no treachery when the victim is placed on guard, as when a heated argument preceded the attack, especially when the victim was standing face to face with his assailant.<sup>30</sup>

In *People v. Salvador*,<sup>31</sup> the Court rejected the presence of treachery due to the prior verbal altercation between therein appellants and Esicio Alonso inside a dance hall. The rough argument continued outside the dance hall where appellants ganged up on Esicio and the latter got fatally wounded. The Court did not appreciate the qualifying circumstance of treachery since the attack could not have been unforeseen. Appellants therein were only convicted of homicide.

In any case, the prosecution here did not offer proof that appellant purposely sought the means employed to insure the killing without harm to himself. In *People v. Colonia*,<sup>32</sup> the Court ruled out treachery as attendant circumstance in the killing of the victim since he was not totally defenseless. It was established that the victim and accused Eduardo had a prior heated argument. This sufficiently forewarned the victim of the possible reprisal from Eduardo's group.

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<sup>28</sup> Id.

<sup>29</sup> See *People v. Aquino*, 396 Phil. 303, 307 (2000).

<sup>30</sup> See *People v. Rios*, 389 Phil. 338, 348 (2000)

<sup>31</sup> 344 Phil. 580, 584 (1997).

<sup>32</sup> 451 Phil. 856, 867 (2003).

Likewise, in *People v. Pilpa*,<sup>33</sup> assailants attacked the victim along a national highway while the latter was having a conversation with five (5) other persons, including a barangay tanod. Given these circumstances, the Court ruled that the assailants did not make any preparation to kill the victim in such a manner as to insure the commission of the crime without risk to themselves. The victim was with five (5) persons who could have helped him as they had in fact helped him repel the attack. The Court thus convicted appellant therein of homicide only.

Here, Edwin was having a drinking spree with his friends when appellant walked up straight to him and stabbed him to death. The fact that appellant was in the company of friends in a busy establishment increased the risk against him. The Court fails to see how the mode of attack appellant adopted could have been purposely sought to guarantee the criminal act without risk to himself. In sum, the courts below erred in appreciating treachery as a qualifying circumstance in this case.

***The killing was not shown  
to have been evidently premeditated***

For evident premeditation to be considered as qualifying or aggravating circumstance, the prosecution must prove: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the culprit has clung to his determination; and (c) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.<sup>34</sup>

Here, the trial court correctly ruled out the aggravating circumstance of evident premeditation in the absence of a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will. The fifteen (15) minute difference from the time appellant got escorted out of the bar until he stepped back into the bar was too short for appellant to have meditated and reflected on the consequences of his decision to finish off the victim. In *People v. Villanueva*,<sup>35</sup> the Court did not appreciate evident

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<sup>33</sup> G.R. No. 225336, September 5, 2018.

<sup>34</sup> See *People v. Cirbeto y Giray*, G.R. No. 231359, February 7, 2018.

<sup>35</sup> 456 Phil. 14, 27 (2003).

premeditation since the time interval of thirty (30) minutes between the altercation at the Highlander Store and the actual assault on Otoleo was too brief to have enabled appellant Villanueva to ponder over the consequences of his intended action.

***Abuse of superior strength  
is also absent here***

Abuse of superior strength connotes a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.<sup>36</sup>

Here, the fact that appellant was armed and the victim was not does not necessarily prove abuse of superior strength. In *People v. Villanueva and Sayson*,<sup>37</sup> the Court held that the fact that the accused-appellants and Valencia, armed with a knife and a stone, ganged up on Enrico does not automatically merit the conclusion that the latter's killing was attended by the qualifying circumstance of abuse of superior strength.

Similarly, that appellant was armed with a knife when he returned to the bar and headed straight to Edwin and stabbed him in the chest is not abuse of superior strength.

In the absence of any qualifying circumstance attendant to the killing of Edwin Santiago Miranda, appellant may only be convicted of homicide. Under Sections 4<sup>38</sup> and 5,<sup>39</sup> Rule 120 of the 1997 Rules of Court, when there is a variance between the offense charged in the Information and that proved or established by the evidence, and the

<sup>36</sup> See *People v. Beduya*, 641 Phil. 399, 410-411 (2010).

<sup>37</sup> 807 Phil. 245, 253 (2017).

<sup>38</sup> SECTION 4. *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

<sup>39</sup> SECTION 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

offense charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged. Since the prosecution was not able to prove any qualifying circumstance here, the accused should only be sentenced to the lesser crime of homicide which is necessarily included in murder. At any rate, this variance between the offense alleged and the offense proven did not violate petitioner's substantial rights. Appellant's right to be informed of the charge against him has not been violated because where an accused is charged with a specific crime, he is duly informed not only of such specific crime but also of lesser crimes or offenses included therein.<sup>40</sup>

### ***Penalty***

Under Article 249 of the Revised Penal Code, homicide is punishable with *reclusion temporal*, viz.:

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*.

Applying the Indeterminate Sentence Law<sup>41</sup> and in the absence of any aggravating or mitigating circumstance, appellant should be sentenced to eight (8) years and one (1) day of *prision mayor* as minimum to fourteen years (14), eight (8) months and one (1) day of *reclusion temporal* as maximum.

On the monetary awards, the Court affirms the award of moral damages of ₱50,000.00 and actual damages of ₱142,263.00.<sup>42</sup> The award of civil indemnity of ₱75,000.00 must be reduced to ₱50,000.00 in accordance with prevailing jurisprudence.<sup>43</sup> On the other hand, the award of exemplary damages in the amount of ₱30,000.00 must be deleted since no aggravating circumstance was proved. A six percent (6%) interest *per annum* on the monetary awards is also imposed from finality of this resolution until fully paid.

**WHEREFORE**, the appeal is **PARTLY GRANTED**. The Decision dated June 29, 2015 of the Court of Appeals in CA-G.R. CR HC No. 06706 is **AFFIRMED** with **MODIFICATION**.

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<sup>40</sup> See *Saldua v. People*, G.R. No. 210920, December 10, 2018.

<sup>41</sup> Act No. 4103 as amended by Act No. 4225.

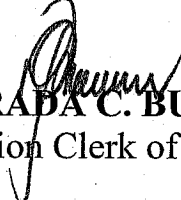
<sup>42</sup> Exhibits "H" to "H-29" CA Rollo, p. 37.

<sup>43</sup> See *People v. Jugueta*, 783 Phil. 806, 849.

**ANGEL JULIO y MATER** is found guilty of **Homicide** and sentenced to eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum. He is further ordered to pay ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱142,263.00 as actual damages. These amounts shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

**SO ORDERED.** *Inting, J., designated as additional member per S.O. No. 2726 dated October 25, 2019.*

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court <sup>1117</sup>

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