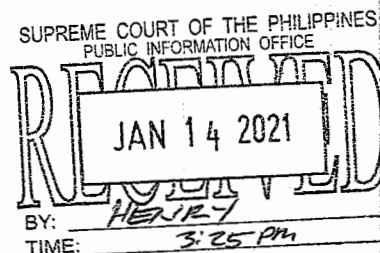




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **July 1, 2020**, which reads as follows:*

**“G.R. No. 230552 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. ROEL HERNANDEZ y TOLENTINO, ERWIN GOMES alias “EWENG,” ANWAR SANCHEZ alias “TOTONG,” and IVAN MIGUEL, *accused*; ROEL HERNANDEZ y TOLENTINO, *accused-appellant*)** — This Court resolves the appeal filed by Roel Hernandez y Tolentino (Hernandez), who contests the Court of Appeals Decision<sup>1</sup> affirming his conviction<sup>2</sup> for murder.

Hernandez had been charged with the murder of Nelson Perolino y Aban (Nelson) in an Information, which was later amended to include his co-accused Erwin Gomes (Gomes), Anwar “Totong” Sanchez (Sanchez), and Ivan Miguel (Miguel). It reads:

On or about November 11, 2005, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, armed with a bladed weapon, conspiring and confederating together, and all of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously attack, assault and stab one Nelson Perolino y Aban with said bladed weapon, hitting the latter on his trunk, thereby inflicting upon him [a] mortal wound which directly caused his instantaneous death, the said killing having been attended by the qualifying circumstances of treachery, evident premeditation and abuse of superior strength, which qualify the killing to murder.

Contrary to law.<sup>3</sup> (Citation omitted)

As his co-accused remained at large only Hernandez entered his plea of not guilty during his arraignment.<sup>4</sup> During his trial, the prosecution

<sup>1</sup> *Rollo*, pp. 2–19. The Decision dated September 28, 2016 was penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Danton Q. Bueser and Renato C. Francisco of the Fourteenth Division, Court of Appeals, Manila.

<sup>2</sup> *CA rollo*, pp. 70–75. The Decision dated February 10, 2015 was penned by Presiding Judge Maria Cheryl B. Laqui-Ceguera of the Regional Trial Court of Pasig City, Branch 269.

<sup>3</sup> *Rollo*, p. 3.

presented five (5) witnesses: (1) Jaime Agustin (Agustin); (2) Neptune Perolino (Neptune); (3) Police Officer 3 Norman Barcellano (PO3 Barcellano); (4) Nenita Perolino (Nenita); and (5) Police Superintendent Jose Arnel M. Marquez, the medico-legal officer.<sup>5</sup>

The prosecution alleged that at around 1:45 a.m. on November 11, 2005, while Agustin was resting with his aunt and cousin after running his tricycle route, members of the barangay tanod approached him. They asked about a certain Nelson, wanting to question the man for his involvement in a stoning incident.<sup>6</sup>

Just then, Nelson emerged from an alleyway. Suddenly, Hernandez and his cohorts, who were also in the area, started attacking him. Gomes allegedly struck Nelson to the ground, then held his arms as Hernandez stabbed Nelson with a concealed knife. Miguel allegedly acted as the lookout for the group. When they were done, the men all fled, and the barangay officials were allegedly unable to stop them.<sup>7</sup>

Nelson's mother awoke to find her son stumbling through their house saying, "*Mama may tama ako[,]*" before dropping to the floor with "blood oozing from his back."<sup>8</sup> He died at the Rizal Medical Center.<sup>9</sup> The autopsy revealed that he suffered multiple stab wounds, incised wounds, and abrasions, with the stab wound in his "right scapular region . . . piercing the lower lobe of the right lung" deemed as the fatal blow.<sup>10</sup>

PO2 Barcellano, the investigator on duty then at the Pasig City Police Station, learned later that day that Hernandez had already submitted himself to the barangay authorities.<sup>11</sup>

In his defense, Hernandez testified that he had no part in Nelson's death. Around the time of the incident, he claimed to have been drinking at his house with Sanchez, whom he then helped get a ride home. On his way back, Hernandez allegedly saw a commotion surrounding some persons

<sup>4</sup> CA rollo, pp. 70-75.

<sup>5</sup> Rollo, p. 4 and CA rollo, p. 71. Barcellano was sometimes designated as PO3 in the rollo.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Rollo, pp. 4-5.

<sup>9</sup> Id. at 5 and CA rollo, p.71.

<sup>10</sup> Id. at 5.

<sup>11</sup> Id.

fighting. To his surprise, he learned later that morning that he was implicated in the case. Eventually, he was arrested.<sup>12</sup>

In its February 10, 2015 Decision,<sup>13</sup> the Regional Trial Court convicted Hernandez for Nelson's murder. It found that all the elements of the crime were established by witness testimonies and corroborating documents, which positively identified Hernandez as the one who stabbed Nelson to death.<sup>14</sup> The trial court also found conspiracy in that all the accused acted toward the common purpose of killing Nelson. It also deemed treachery present in the suddenness of their attack, which allowed the crime's commission while ensuring that Nelson could not defend himself.<sup>15</sup>

As to Hernandez's defenses, the trial court found his denial "unsubstantiated by clear and convincing evidence" and inherently weak against the eyewitnesses' positive identification.<sup>16</sup> It also rejected his claim of the mitigating circumstance of voluntary surrender after finding no evidence that it was "an acknowledgement of his guilt or an intention to save the authorities from the trouble and expense" of arresting him.<sup>17</sup>

On appeal, Hernandez argued that the prosecution was unable to establish his guilt, faulting the prosecution witnesses for their inconsistent testimonies. He pointed out that the witnesses contradicted each other as to whether there was sufficient lighting at the crime scene for them to have accurately seen the exact participation of each accused.<sup>18</sup> He also pointed out that Agustin testified to seeing all four of the accused stabbing Nelson, while Neptune testified to seeing only Hernandez doing so.<sup>19</sup> As to Miguel's participation, Hernandez pointed out that the witnesses offered conflicting accounts: Agustin remembered Miguel acting as lookout, while Neptune recalled him holding down Nelson as he was being stabbed.<sup>20</sup> Given the conflicting versions, Hernandez argued that there could be no basis for a finding of conspiracy.<sup>21</sup>

<sup>12</sup> Id. at 6 and 16; *CA rollo*, p. 72.

<sup>13</sup> *CA rollo*, pp. 70-75.

<sup>14</sup> Id. at 72-73.

<sup>15</sup> Id. at 73.

<sup>16</sup> Id. at 73-74.

<sup>17</sup> Id. at 74.

<sup>18</sup> Id. at 60.

<sup>19</sup> Id. at 60-61.

<sup>20</sup> Id. at 61-62.

<sup>21</sup> Id. at 63.

Moreover, Hernandez contended that “[t]he mere suddenness” of the alleged attack could not establish treachery.<sup>22</sup> He also insisted that his voluntary surrender should have mitigated his liability because “despite having the chance of absconding, [he] opted to submit himself to the authorities.”<sup>23</sup>

For its part, the prosecution maintained that the witness testimonies were credible, arguing that any inconsistency in them did not affect their material statements positively identifying Hernandez as the one who stabbed Nelson. According to the prosecution, questions on the crime scene’s lighting and the exact participation of Hernandez’s co-accused did not detract from the trial court’s finding that all the accused surrounded and overwhelmed the victim, killing him.<sup>24</sup>

The prosecution also argued that without proof that Hernandez’s voluntary surrender was done to acknowledge guilt or save the authorities the trouble of apprehending him, it could not mitigate his liability. Since Hernandez submitted to the authorities only to clear his name, the prosecution maintained that this was no voluntary surrender.<sup>25</sup>

In a September 28, 2016 Decision,<sup>26</sup> the Court of Appeals affirmed the murder conviction.<sup>27</sup> But while it affirmed Hernandez’s guilt, it did appreciate his claim of voluntary surrender. It held that the spontaneity of his surrender could be gleaned as a way to voluntarily clear his name, or to allow the authorities to end efforts to apprehend him.<sup>28</sup>

Hernandez filed a Notice of Appeal,<sup>29</sup> which was given due course in the Court of Appeals’ October 26, 2016 Resolution.<sup>30</sup> When required to file their supplemental briefs,<sup>31</sup> both parties manifested that their briefs before the Court of Appeals had sufficiently discussed their arguments.<sup>32</sup>

For this Court’s resolution is the issue of whether or not the prosecution proved beyond reasonable doubt that accused-appellant Roel Hernandez y Tolentino was guilty of murder.

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<sup>22</sup> Id. at 64.

<sup>23</sup> Id. at 65.

<sup>24</sup> Id. at 89–90.

<sup>25</sup> Id. at 92.

<sup>26</sup> *Rollo*, pp. 2–19.

<sup>27</sup> Id. at 17.

<sup>28</sup> Id. at 16.

<sup>29</sup> Id. at 20–21.

<sup>30</sup> Id. at 23.

<sup>31</sup> Id. at 25–26.

<sup>32</sup> Id. at 35–38 (accused-appellant’s Manifestation) and 27–32 (plaintiff-appellee’s Manifestation).

The appeal is dismissed.

The Court of Appeals correctly affirmed the Regional Trial Court's conviction of accused-appellant. Article 248 of the Revised Penal Code prescribes murder, as follows:

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 perpetua*, to death if 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.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis in the original)

*People v. Dimapilit*<sup>33</sup> summarized the crime's elements, as follows:

- (1) that a person was killed;
- (2) that the accused killed him or her;
- (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and
- (4) that the killing is not parricide or infanticide.<sup>34</sup> (Citation omitted)

Here, the lower courts found that accused-appellant stabbed Nelson to death in a sudden and unexpected attack, with the aid of several others. The Regional Trial Court found the testimonies of Agustin and Neptune sufficiently credible to convict accused-appellant.

<sup>33</sup> 816 Phil. 523 (2017) [Per J. Leonen, Second Division].

<sup>34</sup> Id. at 540.

The Regional Trial Court assessed the credibility of the witnesses during trial,<sup>35</sup> and found that they adequately established the elements of the crime. It held:

Against the damning evidence presented by the prosecution, Hernandez can only muster denial, which if unsubstantiated by clear and convincing evidence is inherently a weak defense as it is negative and self-serving. His unsubstantiated denial therefore cannot overcome his positive identification as the assailant of [Nelson]. "As between the categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail[.]"<sup>36</sup> (Citation omitted)

The Court of Appeals affirmed these findings, given the trial court's opportunity to observe a witness's demeanor during trial.<sup>37</sup> It also found that Agustin's and Neptune's testimonies corroborated each other on the material point of accused-appellant's participation in Nelson's killing. In both accounts, accused-appellant was positively identified as a participant in the attack "by either punching [Nelson], holding his hands[,] and stabbing him at his back."<sup>38</sup>

The rule is that the trial court's determination of witness credibility will seldom be disturbed on appeal unless significant matters were overlooked. Reversal of these findings becomes even more inappropriate when affirmed by the Court of Appeals.<sup>39</sup> This Court, therefore, affirms the lower courts' assessment of the prosecution's evidence in this case.

Accused-appellant fails to convince this Court that the supposed inconsistencies in the witness testimonies cast doubt on his guilt. The alleged inconsistencies pertained to the following: (1) the amount of lighting at the crime scene; (2) whether only accused-appellant or all of the accused took turns in stabbing the victim; and (3) the exact participation of co-accused Miguel.

As aptly discussed by the Court of Appeals, these supposed inconsistencies pertained to extraneous matters.<sup>40</sup> Whether or not the witnesses remember the exact participation of the other accused, they did not deviate from their testimonies showing that accused-appellant took part in the acts that resulted in Nelson's death.

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<sup>35</sup> CA rollo, pp. 18-19.

<sup>36</sup> Id. at 73-74.

<sup>37</sup> Rollo, pp. 8-9.

<sup>38</sup> Id. at 13.

<sup>39</sup> *People v. Diu*, 708 Phil. 218 (2013) [Per J. Leonardo-De Castro, First Division].

<sup>40</sup> Rollo, p. 13.

The witness testimonies are also consistent with the medical findings that reported the fatal blow on Nelson. Where Agustin and Neptune both recalled a group of men stabbing the victim, the medical report indicated multiple incised wounds, stab wounds, and abrasions.<sup>41</sup> Likewise, the witnesses were consistent, even on cross-examination, that accused-appellant “directly participated in the attack, pulled out a knife[,] and stabbed [Nelson] while he was pinned down to the ground.”<sup>42</sup>

In *People v. Abella*,<sup>43</sup> this Court affirmed the conviction of the several accused despite the victim’s autopsy report directly contradicting eyewitness testimony as to whether the victim was stabbed. This Court explained its reasoning, as follows:

*ELENA must have been mistaken in her observation of the events or in her recollection. But this is understandable, as several persons were actively engaged in the mauling of the victims. It would have been highly unlikely for her to remember accurately their movements. Lapse of time blurs recollections. Human memory can be treacherous. It is a very common thing for honest witnesses to confuse their recollection of what they actually observed with what they have persuaded themselves to have happened or with impressions and conclusions not really drawn from their actual knowledge.*

*While ELENA’s testimony on the stabbing does not ring true in the face of the physical evidence, this does not mean that her entire testimony is false or had been contrived. It is significant to note that her identification of the appellants as malefactors was corroborated by the other prosecution witnesses, who pointed to them as the victims’ abductors. Moreover, her testimony that they and their cohorts had beaten the victims by using lead pipes and blunt instruments was corroborated by the autopsy report, which revealed that most of the victims sustained lacerated wounds, contusions and hematoma.<sup>44</sup> (Emphasis supplied, citation omitted)*

The same reasoning applies here, and even more so, since the physical evidence corroborates the witness testimonies in their material points. In any event, the prosecution was able to establish conspiracy by showing that all of the accused acted toward the same goal of killing Nelson. “Conspiracy, once proven, has the effect of attaching liability to all of the accused, regardless of their degree of participation[.]”<sup>45</sup>

Likewise, the witnesses’ description of the “sudden, unexpected, and unforeseen”<sup>46</sup> attack against the victim, who was “not aware of the danger

<sup>41</sup> CA rollo, p. 71.

<sup>42</sup> Rollo, p. 13.

<sup>43</sup> *People v. Abella*, 393 Phil. 513 (2000) [Per C.J. Davide, Jr., First Division].

<sup>44</sup> Id. at 533.

<sup>45</sup> *People v. Feliciano, Jr.*, 734 Phil. 499 (2014) [Per J. Leonen, Third Division].

<sup>46</sup> Rollo, p. 15.

posed<sup>47</sup> by accused-appellant and the others, sufficiently established treachery. Treachery contemplates an attack that gives “no opportunity for the victims to retaliate or even to defend themselves.”<sup>48</sup> Here, in having “surrounded and overwhelmed”<sup>49</sup> Nelson as he emerged unaware from an alleyway, the accused attacked him without giving him any opportunity to defend himself. Treachery was properly appreciated.

We likewise affirm the Court of Appeals’ appreciation of accused-appellant’s voluntary surrender in his favor. Surrender is voluntary when done spontaneously and with intent to unconditionally submit to the authorities, motivated either by: (1) an acknowledgement of his guilt; or (2) a wish to save the authorities the costs of undertaking his arrest.<sup>50</sup>

Here, accused-appellant surrendered to the barangay officials after learning that he was suspected of being involved in Nelson’s killing. The arresting officer also admitted during cross-examination that accused-appellant voluntarily appeared before the barangay officials, which led to his arrest.<sup>51</sup> These admissions borne by the transcripts were made during court proceedings and do not require proof.<sup>52</sup> Neither were they rebutted by the prosecution. Thus, the Court of Appeals properly considered these facts in determining the voluntariness of accused-appellant’s surrender:

*Either the appellant went to the barangay hall for questioning or to clear his name, his submission essentially caused the authorities to set aside its operation for his search and capture and eventually prevented the authorities from incurring the cost of the said operation. Although the barangay tanods failed to apprehend Hernandez and his co-accused at the crime scene, Hernandez voluntarily gave himself up to the barangay authorities of Palatiw and he was turned over to the Pasig City Police Station.<sup>53</sup> (Emphasis supplied)*

All told, the lower courts correctly found that all the elements of the crime exist based on the prosecution witnesses’ testimonies. Accused-appellant failed to raise substantial grounds for a reversal of these findings. His conviction must be sustained.

Finally, this Court affirms the Court of Appeals’ application of *People v. Jugueta*<sup>54</sup> in determining accused-appellant’s liability for civil indemnity and damages. In view of the presence of the qualifying circumstance of

<sup>47</sup> Id.

<sup>48</sup> *People v. Feliciano, Jr.*, 734 Phil. 499 (2014) [Per J. Leonen, Third Division].

<sup>49</sup> *Rollo*, p. 89.

<sup>50</sup> *People v. Garcia*, 577 Phil. 483 (2008) [Per J. Brion, En Banc].

<sup>51</sup> *CA rollo*, pp. 65-66.

<sup>52</sup> RULES OF COURT, Rule 129, sec. 4.

<sup>53</sup> *Rollo*, p. 16.

<sup>54</sup> 783 Phil. 806 (2016) [Per J. Peralta, En Banc].



treachery, lack of aggravating circumstance, and the presence of the mitigating circumstance of voluntary surrender, the imposable penalty is *reclusion perpetua*. Consequently, accused-appellant is liable for civil indemnity at ₱75,000.00, moral damages at ₱75,000.00, and exemplary damages at ₱75,000.00. Temperate damages are also awarded in the absence of proof of actual damages, which the Court of Appeals correctly imposed at ₱50,000.00.

**WHEREFORE**, the findings of fact and conclusions of law of the Court of Appeals are **AFFIRMED**. The September 28, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC. No. 07312 is **AFFIRMED**.

Accused-appellant Roel Hernandez y Tolentino is found **GUILTY** beyond reasonable doubt of murder. He is sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim, Nelson Perolino, civil indemnity, moral damages, and exemplary damages at ₱75,000.00 each, temperate damages at ₱50,000.00, and the costs of the suit.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Resolution until fully paid.<sup>55</sup>

**SO ORDERED.”**

Very truly yours,

*Mis DDC Batt*  
**MISAEAL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
GER  
11/19/20

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<sup>55</sup> *Nacar v. Gallery Frames*, 716 Phil. 216 (2013) [Per J. Peralta, En Banc].

Mr. Roel T. Hernandez  
c/o The Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
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The Presiding Judge  
REGIONAL TRIAL COURT  
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(Crim. Case No. 132038)

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