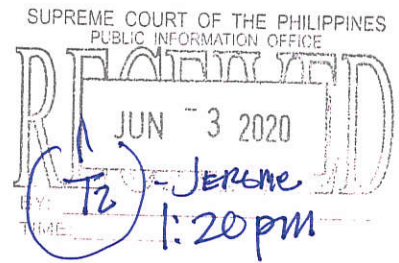




Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated February 19, 2020, which reads as follows:

“G.R. No. 229513 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. RUEL TAPAY y JANDUSAY, *accused-appellant*, MICHAEL AVELINO y BAGUI, WILFREDO CULTURA y BAGUI, and BRYAN GERONIMO y BAGUI, *accused*). — For this Court’s resolution is a Notice of Appeal¹ challenging the Decision² of the Court of Appeals, which affirmed the Regional Trial Court’s Decision³ convicting Ruel Tapay y Jandusay (Tapay) of murder.

In a February 1, 2010 Information, Tapay and Michael Avelino (Avelino), in conspiracy with Wilfredo Cultura (Cultura) and Bryan Geronimo (Geronimo), were charged with murder for the killing of Eric Dimaano (Eric), penalized under Article 248 of the Revised Penal Code. The Information read:

That on or about the [sic] February 01, 2010 at around 8:00 o’clock in the evening at Brgy. Soro-Soro Ibaba, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Ruel Tapay y Jandusay, and Michael Avelino y Bagui, a 16 year-old minor acting with discernment, in conspiracy with Wilfredo Cultura y Bagui and Bryan Geronimo y Bagui, while armed with sharp and pointed instruments, deadly weapons, with intent to kill, without any justifiable cause, and the qualifying circumstances of treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, and stab several times, suddenly and without warning, with said sharp and pointed instruments one Eric Dimaano y Orense,

¹ *Rollo*, pp. 22–25.

² *Id.* at 2–21. The March 21, 2016 Decision in CA-G.R. CR-HC No. 06764 was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Apolinario D. Bruselas, Jr. (Chair) and Danton Q. Bueser of the Fourteenth Division of the Court of Appeals, Manila.

³ *CA rollo*, pp. 43–51. The December 5, 2013 Decision in Crim. Case No. 16294 was penned by Presiding Judge Florencio S. Arellano of the Regional Trial Court, Batangas City, Branch 1.

while the latter was unarmed and completely defenseless, thereby hitting him and causing him multiple stab wounds on the different parts of his body, which directly caused the victim's death.

CONTRARY TO LAW.⁴

Cultura and Geronimo remained at large. When arraigned, Tapay and Avelino pleaded not guilty to the crime charged. Thus, trial ensued.⁵

The prosecution, through witnesses Rafael Briones y Soriano (Briones), Technical Sergeant Arnulfo Dimaano y Culiat (TSgt. Dimaano), and Dr. Antonio Vertido (Dr. Vertido),⁶ narrated the following:

At around 8:00 p.m. on February 1, 2010, while Briones was resting in his house in Barangay Soro-Soro, Ibaba, Batangas City, his neighbour, Dodit, asked him to fetch her nephew, Eric. While on his way, Briones ran into Eric.⁷

As they walked home, Briones and Eric met Tapay, Avelino, Cultura, and Geronimo. Suddenly, Cultura punched Eric. Eric attempted to run away, however, the four assailants followed suit and held onto him. They then mauled and stabbed Eric.⁸

Eric eventually lost consciousness. Briones ran towards Dodit's house to inform her of the incident. Dodit and Ric, Eric's uncle, proceeded to the crime scene, and found Eric covered in blood and slumped on the floor.⁹

They brought Eric to the hospital, but he died on the way. Dr. Vertido conducted an autopsy on Eric, and concluded that the cause of his death was multiple stab wounds, including an incised wound to the neck.¹⁰

TSgt. Dimaano corroborated Briones' testimony and stated that on the day of the incident, he was in a birthday party when his wife, Maria Cristina Culiat (Culiat), called him through his cellular phone. She told him that some man wanted to enter their house.¹¹

⁴ *Rollo*, pp. 3–4, citing RTC records, p. 46.

⁵ *Id.* at 4.

⁶ *Id.* at 5–6.

⁷ *CA rollo*, p. 44. Dodit's full name was not mentioned in the *rollo*.

⁸ *Id.*

⁹ *Id.* Ric's full name was not mentioned in the *rollo*.

¹⁰ *Id.* at 45–46.

¹¹ *Id.* at 45.

Upon coming home, TSgt. Dimaano saw a shirtless man, identified later as Tapay. TSgt. Dimaano asked him what he wanted and where he was from. Tapay claimed that he lives in the area and simply wanted to clean himself. TSgt. Dimaano noticed the scratches on his body and the blood on his shoulders.¹²

Jessie Anonuevo (Anonuevo), TSgt. Dimaano's cousin, arrived and told him that Eric, his *compadre's* son, was stabbed. TSgt. Dimaano asked Tapay if he was involved in the incident. Tapay responded, "hindi naman po ako ang sumaksak, kasama lamang po ako."¹³ He later turned Tapay over to Barangay Captain Manolo Bagui.¹⁴

Testifying for his defense, Tapay denied killing Eric. He claimed that he was at the house of his employer with Avelino and Anna Bagui, the farm's caretaker, when the alleged incident happened. Cultura and Geronimo later joined them. They informed him that somebody was stabbed and that they needed his help. He ignored their plea. Half an hour later, barangay tanods arrived and arrested him.¹⁵

On the other hand, Avelino narrated that he was with Cultura and Geronimo in a drinking session around 3:00 p.m. that day. The latter eventually left, while Avelino stayed until 8:00 p.m., and decided to go home afterwards. Thirty (30) minutes later, police officers arrived at his house and arrested him.¹⁶ He testified that Cultura was responsible for the crime.¹⁷

In its December 5, 2013 Decision,¹⁸ the Regional Trial Court found Tapay and Avelino guilty of murder. Among others, it held that conspiracy was clearly established. It gave credence to the testimonies of the prosecution witnesses, which it found to be categorical, and corroborated by the autopsy report.¹⁹

However, the trial court suspended Avelino's sentence, in view of his minority. The dispositive portion of the ruling read:

WHEREFORE, in view of all the foregoing, finding the Accused Ruel Tapay y Jandusay **guilty** beyond reasonable doubt, as principal, of the crime of murder, defined and penalized under the provisions of Article 248 of the Revised Penal Code, as amended, there being no generic

¹² Id.
¹³ Id.
¹⁴ Id.
¹⁵ Id. at 46.
¹⁶ Id. at 47.
¹⁷ Id. at 46.
¹⁸ Id. at 43-51.
¹⁹ Id. at 48-49.

aggravating nor mitigating circumstances in attendant (sic), he is hereby sentenced to suffer the penalty of Reclusion Perpetua, and to indemnify the heirs of the deceased Eric Dimaano y Orense the sum of Php 50,000.00 as civil indemnity, and the sum of Php 46,445.00 as actual damages, plus the sum of Php 50,000.00 for moral damages and another sum of Php 30,000.00 as exemplary damages, and to pay the costs.

Considering that Accused Ruel Tapay y Jandusay has undergone preventive imprisonment, being a detention prisoner, and there being no evidence to show that he is a recidivist, he shall be credited in the service of sentence with the full time during which he has undergone preventive imprisonment, had he agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he shall be credited only with four fifths (4/5) of the time during which he has undergone preventive imprisonment, as provided for in Article 29 of the Revised Penal Code, as amended.

The Jail Warden, BJMP, Batangas City or any of his duly authorized representatives is hereby directed to immediately commit the Accused Ruel Tapay y Jandusay to the National Bilibid Prison, Muntinlupa City. Let a commitment order be issued for this purpose.

Likewise, finding Accused Michael Avelino y Bagui (AA) **guilty** beyond reasonable doubt, as principal, of the crime of murder, defined and penalized under the provisions of Article 248 of the Revised Penal Code, as amended, there being the privileged mitigating circumstance of minority in attendant (sic), he is hereby sentenced to suffer the penalty of imprisonment ranging from 10 years of Prision Mayor, as minimum to 14 years 8 months and 1 day of Reclusion Temporal, as maximum, and to indemnify the heirs of the deceased Eric Dimaano y Orense the sum of Php 50,000.00 as civil indemnity, and the sum of Php 46,445.00 as actual damages, plus the sum of Php 50,000.00 for moral damages and another sum of Php 30,000.00 as exemplary damages, and to pay the costs.

However, since Accused Michael Avelino y Bagui is a minor at the time of the commission of the crime, he is entitled to the automatic suspension of sentence under Section 38 of Republic Act No. 9344 in relation to other related laws. Accordingly, the pronouncement of judgment of conviction is suspended.

The Court hereby set the case for disposition measure conference with the branch clerk of court, the social worker of this Court, the juvenile, his parents, and counsel, the victim and counsel (public prosecutor) on March 19, 2014 at 2:00 o'clock in the afternoon. Pursuant to Section 65 and 66 of the Implementing Rules and Regulations of Republic Act No. 9344, the Court will consider the result of said conference and the peculiar circumstance of herein accused and thereafter imposed (sic) the appropriate disposition measures.

SO ORDERED.²⁰ (Emphasis in the original)

²⁰ Id. at 50-51.

Avelino did not file an appeal, only Tapay appealed before the Court of Appeals.²¹

In his Brief,²² Tapay contended that the Regional Trial Court erred in convicting him of the crime charged, despite the prosecution's failure to prove the perpetrator's identity. He claimed that he cannot be criminally liable, considering that Briones admitted in his testimony that he did not see who among the four (4) assailants actually stabbed Eric.²³

Tapay also argued that Tsgt. Dimaano's testimony that he washed himself clean in the latter's house should not be given credence, notably because no physical evidence was presented. He asserted that if it was true, the police could have easily obtained corroborative evidence of his bloody clothing and presented it in court.²⁴

Finally, Tapay argued that the Regional Trial Court erred in finding conspiracy. He reasons that it was not shown that he and the other alleged assailants agreed to commit the felony.²⁵

In its March 21, 2016 Decision,²⁶ the Court of Appeals affirmed the Regional Trial Court's Decision with modifications.

The Court of Appeals ruled that as a co-conspirator to the killing of Eric, Tapay was criminally liable as a principal, regardless whether or not he was the one who stabbed him.²⁷ Moreover, it dismissed Tapay's weak defense of denial.²⁸

The Court of Appeals, however, modified the award of damages. The dispositive portion of its Decision read:

WHEREFORE, premises considered, the appealed 05 December 2013 Decision of the Regional Trial Court of Batangas City, 4th Judicial Region, Branch 1, in Criminal Case No. 16294 for *Murder* is hereby **AFFIRMED** with **MODIFICATION** as regards the award of damages, in that appellant Ruel Tapay y Jandusay is ordered to pay the heirs of the victim: (a) moral damages in the amount of P50,000.00; (b) civil indemnity in the amount of P75,000.00; (c) exemplary damages in the amount of P30,000.00 and (d) temperate damages in the amount of P25,000.00.

²¹ *Rollo*, p. 8.
²² *CA rollo*, pp. 24-42.
²³ *Id.* at 33.
²⁴ *Id.* at 34.
²⁵ *Id.* at 38.
²⁶ *Rollo*, pp. 2-21.
²⁷ *Id.* at 12.
²⁸ *Id.* at 14.

The aforementioned damages shall be subject to interest at the legal rate of six percent (6%) per annum from the date of finality of judgment until fully paid.

SO ORDERED.²⁹ (Emphasis in the original; citation omitted)

Thus, Tapay filed a Notice of Appeal.³⁰ Accordingly, the Court of Appeals gave due course to the Appeal and elevated the case records to this Court.³¹

In its March 29, 2017 Resolution,³² this Court noted the case records and directed the parties to file their respective supplemental briefs.

Both accused-appellant³³ and plaintiff-appellee People of the Philippines, through the Office of the Solicitor General,³⁴ manifested that they would no longer file supplemental briefs. These were noted by this Court in its July 31, 2017 Resolution.³⁵

The sole issue for this Court's resolution is whether or not the Court of Appeals erred in convicting accused-appellant Ruel Tapay y Jandusay for murder.

This Court affirms accused-appellant's conviction with some modifications on the imposed penalty.

Unless the trial court overlooked or misinterpreted significant facts or circumstances, this Court shall not disturb its evaluation of facts.³⁶ This Court finds no reason to disturb the Regional Trial Court's factual findings, as affirmed by the Court of Appeals.

The Regional Trial Court convicted accused-appellant of the crime of murder, which is defined and punished under Article 248 of the Revised Penal Code:

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:

²⁹ Id. at 20–21.

³⁰ Id. at 22–24.

³¹ Id. at 1 and 26.

³² Id. at 28–29.

³³ Id. at 30–34.

³⁴ Id. at 35–38.

³⁵ Id. at 45–46.

³⁶ *People v. Gabrino*, 660 Phil. 485, 493–494 (2011) [Per J. Velasco, Jr., First Division].

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, 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 any 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)

For an accused to be convicted of murder, the prosecution must prove the following elements:

- (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.³⁷ (Citation omitted)

Eric was undisputedly killed, and this does not involve parricide or infanticide. The bone of contention here is whether or not the lack of an eyewitness testimony that identifies accused-appellant as the one who delivered the fatal blow warrants his acquittal.

Contrary to accused-appellant's position, direct evidence that he delivered the fatal blow is not necessary to sustain his conviction. Circumstantial evidence suffices to establish guilt beyond reasonable doubt. Rule 133, Section 4 of the Rules of Court states:

SECTION 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce

³⁷ *People v. Dimapilit*, 816 Phil. 523, 540 (2017) [Per J. Leonen, Second Division].

a conviction beyond reasonable doubt. (Emphasis in the original)

Here, there was no eyewitness that could testify on who exactly stabbed Eric. However, the record is replete with circumstances pointing to accused-appellant as one of the culprits.

First, it must be underscored that TSgt. Dimaano testified how, immediately after the incident, accused-appellant admitted to him that he was involved in the stabbing of Eric.

Generally, “[a] witness can testify only to the facts he knows of his personal knowledge; that is, which are derived from his own perception.”³⁸ However:

SECTION 42. *Part of res gestae.* — Statements made by a person while a startling occurrence is taking place or immediately prior or *the occurrence in question and its immediately attending circumstances.*

....

The term *res gestae* has been defined as “those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act.” In a general way, *res gestae* refers to the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication. *The rule on res gestae encompasses the exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or immediately after the commission of the crime when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the res gestae.*³⁹ (Emphasis supplied)

*People v. Salafranca*⁴⁰ discussed the admissibility of *res gestae*:

A declaration or an utterance is deemed as part of the *res gestae* and thus admissible in evidence as an exception to the hearsay rule when the following requisites concur, to wit: (a) *the principal act, the res gestae, is a startling occurrence; (b) the statements are made before the declarant had time to contrive or devise; and (c) the statements must concern by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.* The test of admissibility of evidence as a part of the *res gestae* is, therefore, whether the act, declaration, or exclamation is so intimately interwoven

³⁸ RULES OF COURT, Rule 130, sec. 36.

³⁹ RULES OF COURT, Rule 130, sec. 42.

⁴⁰ 682 Phil. 470 (2012) [Per J. Bersamin, First Division].

or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony.⁴¹ (Emphasis supplied, citations omitted)

The four assailants' sudden attack is undoubtedly a startling occurrence. Accused-appellant's statement was uttered immediately after the crime transpired, and thus, is admissible as *res gestae*.

Second, as conspiracy was clearly established, it is irrelevant whether or not accused-appellant delivered the fatal blow. Even assuming that he did not actually stab Eric, he is still liable as a principal for the crime charged. The law imputes the same criminal liability between conspirators. It is settled that "in conspiracy, the act of one is the act of all."⁴² Each conspirator's act is not to be treated separately, since it was done to arrive at conspirators' common criminal design. *People v. Peralta*⁴³ explained:

[I]t is impossible to graduate the separate liability of each [conspirator] without taking into consideration the close and inseparable relation of each of them with the criminal act, for the commission of which they all acted by common agreement . . . The crime must therefore in view of the solidarity of the act and intent which existed between the . . . accused, be regarded as the act of the band or party created by them, and they are all equally responsible[.]⁴⁴ (Citation omitted)

Here, accused-appellant clearly conspired with Avelino, Geronimo, and Cultura. The four (4) of them chased, mauled, and stabbed Eric in concert.

Third, the Court of Appeals correctly appreciated abuse of superior strength as the qualifying circumstance for the crime charged.⁴⁵ Abuse of superior strength was present when the accused took advantage of the disproportionate force between them and the victim.⁴⁶

Accused-appellant and his co-accused beat Eric simultaneously upon catching him. The four (4) assailants were armed with a bladed weapon. They clearly outnumbered Eric and Briones. Eric immediately died from the multiple stab wounds, and did not even reach the hospital alive.⁴⁷

⁴¹ Id. at 482–484.

⁴² *People v. Las Piñas*, 739 Phil. 502, 525 (2014) [Per J. Leonardo-De Castro, First Division] citing *People v. Pantaleon, Jr.*, 600 Phil. 186, 223 (2009) [Per J. Brion, Second Division].

⁴³ 134 Phil. 703 (1968) [Per Curiam, En Banc].

⁴⁴ Id. at 719.

⁴⁵ *Rollo*, p. 18.

⁴⁶ *People v. Villanueva*, 807 Phil. 245 (2017) [Per J. Reyes, Third Division].

⁴⁷ CA rollo, pp. 45–46.

Finally, the rule is settled that when not attended by ill motive, a categorical and consistent positive identification, as in Briones' eyewitness account of the attack, prevails over accused-appellant's self-serving defense of denial.

Thus, as the Court of Appeals found, the following circumstantial evidence proved accused-appellant's guilt beyond reasonable doubt:

First – While Rafael and the victim were walking their way home, the group of appellant Ruel, Michael Avelino, Wilfredo Cultura and Bryan Geronimo intercepted them.

Second – Without warning, Wilfredo suddenly boxed the victim prompting the latter to run away from the group.

Third – The group chased the victim. When they got hold of him, they simultaneously mauled and stabbed the victim. The victim fell to the ground and lost consciousness.

Fourth – Few hours after the stabbing, prosecution witness Arnulfo Dimaano saw appellant Ruel near his house situated in the same barangay where the incident took place. Appellant, who had no upper garment on, asked Arnulfo if he could wash his body in their house.

Fifth – Arnulfo noticed the scratches and blood stains on appellant's body.

Sixth – Jessie Anonuevo arrived and reported that there was a stabbing incident at the nearby road in the same barangay.

Seventh – When Arnulfo asked appellant “*kasama ka ba sa pumatay?*”, appellant replied - “*hindi naman po ako ang sumaksak, kasama lamang po ako*”.

Eight – The autopsy report reveals that the victim sustained contusions, abrasions, hematoma and multiple stab wounds.⁴⁸ (Emphasis in the original; c^{itations omitted})

Accused-appellant's guilt for the murder of Eric has been proven beyond reasonable doubt. The penalty of *reclusion perpetua* was correctly imposed. However, to conform to recent jurisprudence,⁴⁹ this Court deems it proper to increase the amounts of moral damages from ₱50,000.00 to ₱75,000.00, exemplary damages from ₱30,000.00 to ₱75,000.00, and the temperate damages from ₱25,000.00 to ₱50,000.00.

WHEREFORE, the appeal is **DISMISSED**. The Court of Appeals' March 21, 2016 Decision in CA-G.R. CR-HC No. 06764 is **AFFIRMED with MODIFICATIONS**.

⁴⁸ Rollo, pp. 13–14.

⁴⁹ See *People v. Jugueta*, 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

Accused-appellant Ruel Tapay y Jandusay is found **GUILTY** beyond reasonable doubt of murder, punished under Article 248 of the Revised Penal Code. He is sentenced to suffer the penalty of *reclusion perpetua*. He is also **DIRECTED** to pay the heirs of Eric Dimaano, moral damages, civil indemnity, and exemplary damages worth ₱75,000.00 each, and temperate damages worth ₱50,000.00.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Resolution until their full satisfaction.⁵⁰

SO ORDERED.”

Very truly yours,

Mis-DC Batt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
Jan 21/2020

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The Presiding Judge
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Branch 1, Batangas City
(Criminal Case No. 16294)

The Superintendent
New Bilibid Prison
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Mr. Ruel J. Tapay
c/o The Superintendent
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⁵⁰ See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].