



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **17 March 2021** which reads as follows:*

“G.R. No. 251575 (*People of the Philippines v. Jose Norvin Despi y Tresfuentes @ “Toto” and @ “Jose Marvin Despi”*). –

The Court **NOTES:**

1. the manifestation (in lieu of supplemental brief) dated 19 November 2020 of counsel for accused-appellant in compliance with the Resolution dated July 13, 2020, dispensing with the filing of supplemental brief since he has exhaustively discussed the assigned errors in the appellant’s brief and no new issues material to the case were discovered;

2. the letter (in Filipino) dated November 22, 2020 of accused-appellant narrating what happened on March 30, 2014, and seeking help as he is innocent of the crime imputed to him; and

3. the manifestation and motion (in lieu of supplemental brief) dated December 21, 2020 of the Office of the Solicitor General, dispensing with the filing of supplemental brief because the issues raised by accused-appellant in the brief before the Court of Appeals have been thoroughly traversed by the appellee on its brief dated January 28, 2019.

We affirm.

Article 248 of the Revised Penal Code provides:

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;

x x x x

Verily, murder 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 247;¹ and
- (4) The killing is not parricide or infanticide.²

There is no question here regarding the presence of the first (1st) and fourth (4th) elements. The victim, Harry Canillas (Harry), died of asphyxia by drowning, as evidenced by the Medico-Legal Report prepared by Police Senior Inspector Reah Mangoba Sarmiento. More, the killing is not infanticide or parricide.

Accused-appellant, nonetheless, denies the existence of the second (2nd) and third (3rd) elements.

First, accused-appellant claims that the testimonies of the prosecution witnesses were riddled with inconsistencies and, thus, it is highly unlikely that they actually witnessed the killing. Accused-appellant points out that Jay Domogho (Jay) and Jefford Domogho (Jefford) differed in their testimonies on whether Bhibe Despi (Bhibe) also boxed Harry and whether they hid behind a *banca*. In light of the foregoing, Jay and Jefford's testimonies should not be given weight and credit.³

The Court disagrees.

Both the trial court and the Court of Appeals uniformly gave credence to the clear, straightforward, and categorical accounts of the eyewitnesses. When the credibility of the eyewitnesses is at issue, due deference and respect shall be given to the trial court's factual findings, its calibration of the

¹ **Article 247.** *Death or physical injuries inflicted under exceptional circumstances.*– Any legally Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducer, while the daughters are living with their parents.

Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of this article.

² *People v. Padal*, G.R. No. 232070, October 2, 2019.

³ *CA rollo*, pp. 39-40

testimonies, its assessment of their probative weight, and its conclusion based on such factual findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case. This rule finds an even more stringent application where the trial court's findings are sustained by the Court of Appeals,⁴ as here.

Here, Jay and Jefford categorically narrated the circumstances leading to the death of Harry in a clear, direct, and candid manner. Jay and Jefford recounted that they saw Harry smoking a cigarette while sitting on the shore facing the lake. Accused-appellant, accompanied by his sons, Jomar Despi @ "Sherwin" (Jomar) and Bhibe, attacked Harry from behind by hitting him with a piece of wood without any warning. Jay and Jefford positively identified accused-appellant, known to them as their neighbor, as the one who hit Harry, boxed him on the left side of the head, kicked him repeatedly, leading him to fall face-down into the water, and caused him to drown.⁵

Any alleged inconsistencies in their testimonies pertaining to whether Bhibe also punched Harry, or whether they hid near the bancas, refer to minor details which do not impair or change the fact that accused-appellant killed Harry.

In *People v. Pulgo*,⁶ the Court held that inconsistencies on minor details do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailant. Such inconsistencies reinforce, rather than weaken, credibility. What is vital is that the witnesses were unwavering and consistent in identifying the assailant.

Here, the prosecution witnesses were consistent in saying that it was accused-appellant who attacked Harry and later left him to drown in the lake.

Next, accused-appellant contends that the prosecution failed to prove that the killing was attended by treachery.

We cannot agree.

Notably, there is treachery when the offender commits any of the crimes against the 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 offended party might take. To prove treachery, the following elements must be established:

- (a) The employment of means of execution which gives the person attacked no opportunity to defend or retaliate; and

⁴ *People v. Pigar*, G.R. No. 247658, February 17, 2020.

⁵ *CA rollo*, p. 48.

⁶ 813 Phil. 205, 215 (2017).

- (b) That said means of execution were deliberately or consciously adopted.⁷

Here, the suddenness of accused-appellant's attack from behind, coupled with the fact that he had no quarrel with the victim, made it impossible for the unsuspecting victim to put up a defense.

In *People v. Gunda*,⁸ the Court explained that when the attack against an unarmed victim is so sudden and unexpected that he had no inkling of what assailant was about to do, there is treachery.

Further, in *People v. Raytos*,⁹ the Court held that an attack from behind is treachery.

More, the totality of the evidence, as testified to by the prosecution witnesses, indubitably show that accused-appellant consciously and deliberately adopted the methods, means, or form of his attack to ensure the commission of the crime, without posing any danger to himself that could have come from the victim's retaliatory acts, viz.:

- (a) appellant and his sons invited the victim to gather clams in a remote location;
- (b) without any perceivable provocation on the part of the victim, who was merely sitting on the shore, appellant suddenly attacked him from behind, which resulted in him falling face-down into the water and drowning to death; and
- (c) when appellant's wife asked him where the victim was when they came home without him, one of the sons answered "*Nandoon, nakalutang na sa aplaya*".

This is treachery pure and simple.

We come now to the penalty. Under Article 248 of the Revised Penal Code, murder is punishable by *reclusion perpetua* to death.¹⁰

Except for treachery, which qualified the killing to murder, no other aggravating or mitigating circumstances are present. The lower courts, therefore, correctly sentenced appellant to *reclusion perpetua*.

As for damages, the Court of Appeals correctly awarded civil indemnity, moral damages, and exemplary damages of ₱75,000.00 each. Pursuant to recent jurisprudence,¹¹ the Court of Appeals also correctly deleted

⁷ *People v. Espina*, G.R. No. 219614, July 10, 2019.

⁸ 726 Phil. 289, 295 (2014).

⁹ 810 Phil. 1007, 1027 (2017).

¹⁰ **Art. 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;

x x x x

¹¹ *People v. Jugueta*, 783 Phil. 806, 840 (2016).

the award of actual damages amounting to ₱48,500.00, and sustained the award of temperate damages in the amount of ₱50,000.00.¹²

These amounts shall be subject to six percent (6%) interest *per annum* from finality of this resolution until fully paid.

WHEREFORE, the appeal is **DENIED** and the Decision of the Court of Appeals in CA-G.R. CR-HC No. 10610 dated September 10, 2019, **AFFIRMED**.

Appellant **Jose Norvin Despi y Tresfuentes @ Toto and @ Jose Marvin Despi** is found **GUILTY** of **MURDER** and sentenced to *reclusion perpetua*. He is further ordered to **PAY**:

- 1) ₱75,000.00 as civil indemnity;
- 2) ₱75,000.00 as moral damages;
- 3) ₱75,000.00 as exemplary damages; and
- 4) ₱50,000.00 as temperate damages.

These amounts shall be subject to six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

SO ORDERED.¹¹

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

10 JUN 2021

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¹² *Rollo*, p. 11.

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

PUBLIC ATTORNEY'S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
PAO-DOJ Agencies Building
NIA Road corner East Avenue
1104 Diliman, Quezon City

MR. JOSE NORVIN DESPI y TRESFUENTES @ "TOTO"
& @ "JOSE MARVIN DESPI"(reg)
Accused-Appellant
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

THE DIRECTOR (reg)
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 206
1770 Muntinlupa City
(Crim. Case No. 14-656)

JUDGMENT DIVISION (x)
Supreme Court, Manila

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PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR-HC No. 10610

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