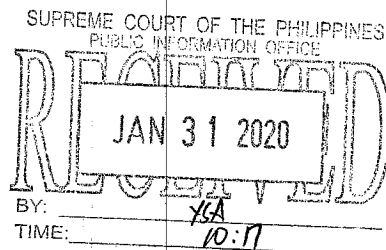




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Special Second Division, issued a Resolution dated **08 January 2020** which reads as follows:

“G.R. No. 233253 (*People of the Philippines, plaintiff-appellee v. Joxane San Regulacion, accused-appellant*).— Considering the allegations, issues, and arguments presented in the accused-appellant’s¹ and plaintiff-appellee’s² briefs, which the parties adopted instead of filing their respective supplementary appeal briefs, the Court resolves to **DISMISS** the appeal³ for failure of Joxane San Regulacion (accused-appellant) to sufficiently show any reversible error in the Decision⁴ dated May 5, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01408-MIN, as to warrant the exercise of the Court’s appellate jurisdiction.

The factual findings of the trial court, as affirmed by the CA, are entitled to great respect and are not disturbed on appeal unless some facts or circumstances of weight and substance were overlooked and misappreciated, and could materially affect the disposition of the case. This conclusiveness is derived from the trial court’s having the first-hand opportunity to observe the demeanor and manner of the witnesses when they testified at the trial.⁵

The Court finds that the trial court and the CA committed no error in convicting accused-appellant of Murder under Article 248 of the Revised Penal Code (RPC), as amended by Section 6 of Republic Act (RA) No. 7659, which reads:

¹ CA Rollo, pp. 23-32.

² *Id.* at pp. 50-83.

³ Rollo, p. 8.

⁴ *Id.* at pp. 3-9; penned by Associate Justice Edgardo A. Camello, with Justice Rafael Antonio M. Santos and Ruben Reynaldo G. Roxas, concurring.

⁵ *People v. Rollen*, G.R. No. 231128, February 13, 2019.

Section 6. Article 248 of the same Code is hereby amended to read as follows:

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

In this case, the identity of accused-appellant cannot be denied as he was positively identified by Jonard Gallogo,⁶ who knew him to be a security guard on duty at Butuan Express. In fact, they belonged to the same agency. This positive identification was categorical, consistent, and without any showing of ill motive on the part of the eyewitness; thus, it prevails over the denial of accused-appellant which was unsubstantiated and self-serving.

The Court likewise finds that all of the elements for treachery were established in the case. The victim was walking along the road when accused-appellant hacked him with a *bolo* from behind hitting the neck.⁷ The location of the injury shows the treacherous character of the assault.⁸ The post-mortem report⁹ described the injuries as lacerated wound 2.5 cm length and 1 cm depth, slanting, at left frontal area; hacking wound from the right maxillary area level of the right ear anteriorly, extending to the posterior neck area traversing the nape, with cervical bony involvement deep and penetrating.¹⁰ The neck was nearly severed.¹¹ In other words, evidence showed that the attack was sudden; the victim was defenseless when he was attacked from behind; and the means employed by accused-appellant was consciously adopted to ensure impunity.

All told, with the qualifying circumstance of treachery present,

⁶ "Gallogo" in some parts of the *rollo*.

⁷ Records, pp. 118-125.

⁸ *Id.*

⁹ Records, p. 100.

¹⁰ *Id.*

¹¹ *Id.* at 123.

accused-appellant committed the crime of Murder, defined and punished with *reclusion perpetua* to death, under Article 248 of the RPC, as amended by Section 6 of RA 7659. However, without any aggravating or mitigating circumstance present, the penalty of *reclusion perpetua* was correctly imposed on accused-appellant. The awards of damages must be modified in accordance with the prevailing jurisprudence.

According to *People v. Jugueta*,¹² the proper amounts of damages for the crime like murder where the penalty imposed is *reclusion perpetua* are: ₱75,000.00 as civil indemnity; ₱75,000 as moral damages; and ₱75,000 as exemplary damages. Further, in *People v. Oliva*,¹³ the Court ruled that, "when actual damages proven by receipts during the trial amount to less than the sum allowed by the Court as temperate damages, the award of temperate damages is justified in lieu of actual damages which are of a lesser amount. Conversely, if the amount of actual damages proven exceeds, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted. The rationale for this rule is that it would be anomalous and unfair for the victim's heirs, who tried and succeeded in presenting receipts and other evidence to prove actual damages, to receive an amount which is less than that given as temperate damages to those who are not able to present any evidence at all."¹⁴

In this case, the lower court granted the following sums: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱30,000.00 as exemplary damages, ₱27,500.00 as actual damages and ₱25,000.00 as temperate damages. Thus, following *Jugueta* and *Oliva* cases, the Court modifies the award of exemplary damages to ₱75,000.00 and delete the actual damages being less than the sum allowed by the Court as temperate damages and in lieu thereof, temperate damages in the amount of ₱50,000.00 is awarded to the victim's heirs.

WHEREFORE, the Court **ADOPTS** the findings of fact and conclusions of law in the Decision of the Court of Appeals in CA-G.R. CR-HC No. 01408-MIN dated May 5, 2017 and **AFFIRMS** with **MODIFICATION** the Decision finding accused-appellant **GUILTY** beyond reasonable doubt of Murder in Criminal Case No. 2013-5126.

¹² *People v. Jugueta*, 783 Phil. 806, 839 (2016).

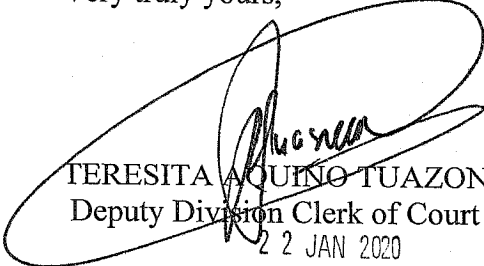
¹³ G.R. No. 237811 (Notice), January 10, 2019.

¹⁴ *Id.*

Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay the victim's heirs the following amounts: (1) ₱75,000.00 as civil indemnity; (2) ₱75,000.00 as moral damages; (3) ₱75,000.00 as exemplary damages; and (4) the award of actual damages is **DELETED** and in lieu thereof, temperate damages in the amount of ₱50,000.00 for loss of earning capacity is awarded to the victim's heirs. All damages awarded shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED." (Bernabe, *J.*, on official leave; Reyes, A., Jr., *J.*, on official business; Hernando, *J.*, designated Acting Chairperson per Special Order No. 2757 dated January 6, 2020).

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court
22 JAN 2020

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THE SUPERINTENDENT (reg)
Davao Prison and Penal Farm
B.E. Dujali Davao del Norte

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 43
Gingoog City, Misamis Oriental
(Crim. Case No. 2013-5126)

COURT OF APPEALS (reg)
Mindanao Station
Cagayan de Oro City
CA-G.R. CR H.C. No. 01408-MIN

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*with copy of CA Decision dated 5 May 2017.
Please notify the Court of any change in your address.
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