



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 23, 2020** which reads as follows:*

**“G.R. No. 234012– PEOPLE OF THE PHILIPPINES vs. CORNELIO DELA CRUZ, JR. a.k.a. JAY-AR DELA CRUZ**

This appeal assails the Decision<sup>1</sup> dated June 7, 2017 of the Court of Appeals in CA-G.R. CR H.C. No. 07578 affirming the trial court’s verdict of conviction against appellant Cornelio Dela Cruz, Jr., a.k.a. Jay-Ar Dela Cruz for the crime of robbery with homicide.

**Antecedents**

***The Charge and the Plea***

By amended information dated April 4, 2005, Welvin Diu y Kotsesa, Dennis Dayaon y Tupit and appellant were jointly charged with robbery with homicide, *viz.* :

The undersigned Second Assistant City Prosecutor accuses Welvin Diu y Kotsesa, Dennis Dayaon y Tupit and CORNELIO DEL MONTE DELA CRUZ alias JAY-AR DELA CRUZ, of the crime of ROBBERY WITH HOMICIDE, committed as follows:

That on or about the 3<sup>rd</sup> day of October 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring and confederating together and mutually aiding and abetting one another, armed with double bladed weapon, with intent to gain and by means of violence and intimidation against person, did then and there willfully, unlawfully and feloniously take, steal and carry away

- over – twelve (12) pages ...

**152-B**

<sup>1</sup> Penned by Associate Justice Maria Filomena D. Singh concurred in by Associate Justice Edwin D. Sorongon, and Associate Justice Myra V. Garcia-Fernandez, all members of the Special Fifteenth Division, *rollo*, pp. 2-19.

from PERLIE SALVADOR y PALISOC, one (1) shoulder bag containing cash money amounting to P1,800.00, to the damage and prejudice of the said PERLIE SALVADOR, in the amount of ONE THOUSAND EIGHT HUNDRED PESOS (P1,800.00), Philippine Currency, and on the occasion of the said taking and stealing the said accused, did then and there willfully, unlawfully and feloniously with intent to rob, stab other complainant NELY SALVADOR y PALISOC, with the use of the bladed weapon on the different parts of her body, and as a result thereof, sustained fatal wounds on the different parts of her body, which eventually caused her death, to the damage and prejudice of the former.

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

The trial court had already convicted Diu and Dayaon under Decision dated December 23, 2008. This verdict of conviction was affirmed all the way to the Supreme Court in *People v. Diu y Kotsesa*.<sup>3</sup> Appellant was still at large during this time.<sup>4</sup>

The case against appellant was revived following his arrest on May 21, 2010 in Leyte. It appeared he had other pending cases at Carigara, Leyte; Ormoc, City; and Angeles City. Assistant Prosecutor Ronald Leo T. Haban thus filed an Ex-Parte Omnibus Motion praying that appellant be transferred within the jurisdiction of the Regional Trial Court, Branch 59, Angeles City, which the trial court granted.<sup>5</sup>

On arraignment, appellant pleaded not guilty.<sup>6</sup> Trial ensued thereafter.

During the trial, the prosecution presented Perlie P. Salvador, Police Senior Inspector Ernesto C. Silva, Senior Police Officer IV Danilo T. Roque, SPO4 George M. Paragas and Edward Meketpekit.<sup>7</sup> On the other hand, the defense presented appellant, Melanie dela Cruz, and Denalyn S. Balana.<sup>8</sup>

### *Version of the Prosecution*

**Perlie P. Salvador** testified that on October 3, 2003, she and her sister Nely Salvador (Nely) reported for work at Halla Hotel in Angeles City. After their shift, they decided to walk home. Around 10 o'clock in the evening, they were traversing Colorado Street, Villasol

- over -

152-B

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

<sup>3</sup> 708 Phil. 218-241 (2013).

<sup>4</sup> *CA rollo*, pp. 51-63.

<sup>5</sup> *Id.*

<sup>6</sup> *Rollo*, p. 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 5.

when they noticed three (3) men urinating on a wall. They turned out to be appellant, Diu and Dayaon. Just after they passed them by, Diu suddenly embraced her from the front and held her breasts while Dayaon and appellant embraced Nely.<sup>9</sup>

She and her sister were able to break loose from their assailants and run. But Diu grabbed her bag which contained her personal belongings, work uniform, and ₱1,800.00 cash.<sup>10</sup> Too, appellant was able to catch up to Nely and stab her. She (Perlie) turned to her sister and shouted as she personally witnessed Dayaon and appellant alternately stab Nely with a double bladed knife approximately seven (7) inches long. She was only about four (4) meters away from where it happened. Based on her impression, the three (3) men appeared to be under the influence of drug as their eyes were reddish.<sup>11</sup>

The assailants fled the scene immediately after stabbing her sister Nely.<sup>12</sup> She rushed to Nely who was then lying face down on the ground. She embraced her and asked “*ate, ate, anong nangyari sa iyo?*” But Nely did not respond anymore. She called for help and rushed Nely to the hospital. But Nely was pronounced dead on arrival.<sup>13</sup>

**PSI Ernesto Cunanan Silva** testified according to his affidavit of apprehension and affirmed the truthfulness thereof. Although he was not a member of the apprehending team, he obtained information from witness Eduardo Mekitpekit that appellant stabbed Nely.<sup>14</sup>

**SPO4 George Miranda Paragas** also testified that he executed an affidavit of apprehension. He did not, however, confirm the statements in the said affidavit because he could no longer remember the details of this case.<sup>15</sup>

**SPO4 Danilo Talavera Roque** identified in open court, the affidavit of apprehension he executed in relation to this case and confirmed the truthfulness of the statements therein.<sup>16</sup>

- over -

152-B

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<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *CA rollo*, p. 55.

<sup>13</sup> *Rollo*, pp. 4-5.

<sup>14</sup> *CA rollo*, p. 56.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

**Edward Roxas Mekitpekit** testified that he personally knew appellant “Jay-Ar.” On October 4 or 5, 2003, around 5 o’clock in the morning, appellant and Diu admitted to him that robbed Perlie and Nely and that appellant stabbed Nely.<sup>17</sup>

The prosecution offered in evidence the following documentary and physical evidence: affidavit of apprehension, Nely’s death certificate, Perlie’s sworn statement, Nely’s medical certificate, knife with holster, black electrical tape, and the transcripts from Diu and Dayaon’s trial.<sup>18</sup>

### *Version of the Defense*

**Appellant** denied any participation in the crime charged. On October 3, 2003, around 10 o’clock in the evening, he was far out at sea fishing with his uncles, Jesse, Jerry, Julio and Roel all surnamed Bermoy. He grew up in Leyte but he stayed in Tacloban from 1990 to 2010. He denied having been in any part of Luzon until he got transferred to Angeles City in 2011 to stand trial.<sup>19</sup>

**Melanie Montez Dela Cruz**, appellant’s sister, testified that appellant had been a fisherman since he was ten (10) years old. On October 3, 2003, appellant went out to fish together with his uncles from the afternoon until 7 o’clock in the morning the next day. She did not personally know Diu and Dayaon.<sup>20</sup>

**Denalyn Soberano Balana**, Melanie’s best friend, corroborated Melanie’s testimony that appellant indeed went out fishing with his relatives on October 3, 2003.<sup>21</sup>

### **The Trial Court’s Ruling**

By Decision<sup>22</sup> dated May 11, 2015, the Regional Trial Court, Branch 59, Angeles City rendered a verdict of conviction:

WHEREFORE, judgment is rendered finding accused Cornelio Del Monte Dela Cruz Jr. alias Jay-Ar Dela Cruz guilty beyond reasonable doubt of ROBBERY with HOMICIDE defined in Article 293 and penalized in paragraph 1, Article 294 of the Revised Penal Code, and hereby sentences him to suffer the penalty of *reclusion perpetua*.

- over -

**152-B**

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<sup>17</sup> *Id.* at 56-57.

<sup>18</sup> *Id.* at 54-55.

<sup>19</sup> *Id.* at 58.

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

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 51-63.

Accused Cornelio Del Monte Dela Cruz, Jr. alias Jay-Ar dela Cruz is also ordered to pay:

- (a) the heirs of Nely P. Salvador the amounts of Fifty thousand pesos (P50,000.00) as civil indemnity, Fifty thousand pesos (P50,000.00) as moral damages, and Twenty-five thousand pesos (P25,000.00) as temperate damages; and
- (b) Perlle Salvador the amounts of Fifty thousand pesos (P50,000.00) as moral damages and One thousand eight hundred pesos (P1,800.00) as restitution for the cash taken from her,

plus legal interest on all damages awarded at the legal rate of six percent (sic) (6%) interest per annum to be computed from the date of finality of this Decision.

No costs.

SO ORDERED.<sup>23</sup>

The trial court gave full credence to Perlle's positive identification of her and Nely's assailants and rejected appellant's bare denial and alibi. Perlle already testified against the two (2) other accused, Diu and Dayaon, and recounted the events of the fateful night during the trial against appellant. She vividly recognized appellant as the one who repeatedly stabbed her sister Nely due to her close proximity to him at the time of the incident. Sans any showing of ill-motive on the part of the witnesses, there was no reason for them to fabricate a story against appellant and their testimonies deserve full credence.

Too, the prosecution sufficiently established all the elements of the complex crime of robbery with homicide. Appellant, Diu and Dayaon's intention was to rob the victims using violence. Intent to gain was manifested when Diu grabbed Perlle's bag which contained her office uniform and ₱1,800.00 cash. Clearly, personal properties were taken and, on the occasion thereof, appellant repeatedly stabbed Nely to death.<sup>24</sup>

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

On appeal, appellant faulted the trial court for rendering the verdict of conviction despite the alleged failure of the prosecution to sufficiently establish all the elements of the crime charged. Perlle

- over -

152-B

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<sup>23</sup> *Id.* at 62-63.

<sup>24</sup> *Id.* at 51-63.

could not have possibly identified appellant nor caught a clear view of him since she herself was struggling to escape Diu's clutches. More, appellant could not have been at the scene of the crime since he was out at sea in Leyte on October 3, 2003. That appellant admitted to Eduardo that he stabbed Nely could not be given credence because they were only acquaintances.

On the other hand, the Office of the Solicitor General (OSG)<sup>25</sup> through Assistant Solicitor General Magtanggol M. Castro and Associate Solicitor III Jefferson C. Secillano defended the trial court's verdict of conviction and argued that appellant's denial and alibi cannot prevail over Perlle's positive identification. It countered that the prosecution had sufficiently established all the elements of the crime of robbery with homicide. *First*, appellant and his cohorts took personal property belonging to Perlle. *Second*, intent to gain was presumed from the unlawful taking of the personal property. *Third*, the crime was attended with violence when appellant and his cohorts embraced Perlle and her sister Nely and appellant stabbed the latter to death. *Fourth*, Perlle's categorical and straightforward identification of appellant as the one who stabbed Nely, coupled with appellant's confession to Eduardo Mekitpekit proved appellant's and his cohorts' guilt beyond reasonable doubt. The OSG, however, argued that although the trial court was correct in granting the awards of civil indemnity and moral damages, these should be increased to ₱100,000.00 each pursuant to the case of *People v. Torres*.<sup>26</sup>

### The Court of Appeals' Ruling

Through its assailed Decision<sup>27</sup> dated June 7, 2017, the Court of Appeals affirmed the trial court's ruling with modification on the monetary awards, *viz.*:

**WHEREFORE**, the appeal is DENIED. The Decision of Branch 59 of the Regional Trial Court of Angeles City dated 11 May 2015 convicting Cornelio dela Cruz, Jr. y del Monte, in Criminal Case No. 03-668 of the crime of Robbery with Homicide is **AFFIRMED** with the following MODIFICATION as to the civil liability which accused-appellant Cornelio dela Cruz, Jr. y Del Monte aka Jay-Ar dela Cruz shall pay as follows:

To the Heirs of Nely Salvador

- over -

152-B

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<sup>25</sup> *Id.* at 74-95.

<sup>26</sup> 743 Phil. 553-570 (2014).

<sup>27</sup> *CA rollo*, pp. 113-130.

1. The award of civil indemnity *ex delicto* is increased from P50,000.00 to P100,000.00.
2. The award of moral damages is increased from P50,000.00 to P100,000.00.
3. The award of P100,000.00 as exemplary damages is hereby awarded.
4. The amount of P25,000.00 as temperate damages is also awarded.

To Perlie Salvador-Bernabe

1. The amount of P50,000.00 as moral damages is hereby awarded.

All amounts so awarded shall earn six percent (6%) interest per annum, from finality of judgment, until fully paid.

**SO ORDERED.**<sup>28</sup>

### **The Present Appeal**

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution<sup>29</sup> dated December 14, 2017, both appellant<sup>30</sup> and the OSG<sup>31</sup> manifested that they were adopting their respective briefs before the Court of Appeals in lieu of supplemental briefs.

#### **Issue**

Did the Court of Appeals err in affirming appellant's conviction for the crime of robbery with homicide?

#### **Ruling**

The appeal utterly lacks merit.

Appellant was charged with the complex crime of robbery with homicide under Article 294, paragraph 1 of the Revised Penal Code, *viz.*:

**Art. 294.** *Robbery with violence against or intimidation of persons — Penalties.* — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

- over -

**152-B**

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<sup>28</sup> *Id.* at 129-130.

<sup>29</sup> *Id.* at 25-26.

<sup>30</sup> *Id.* at 27-29.

<sup>31</sup> *Id.* at 31-32.

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) taking of personal property belonging to another; (2) intent to gain; (3) use of violence or intimidation against a person; and (4) homicide, its generic sense, was committed on the occasion or by reason of the robbery. A conviction requires certitude that the **robbery is the main purpose, and objective of the malefactor and the killing is merely incidental to the robbery**. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.<sup>32</sup>

Here, all the above-mentioned elements are present. *First*, Diu embraced Perlle and grabbed her personal property - her bag containing her uniform and ₱1,800.00, while Dayaon and appellant held Nely. *Second*, intent to gain became manifest when, after Perlle was able to escape from Diu's embrace, Diu grabbed Perlle's bag. *Third*, violence and intimidation attended the robbery since three (3) able-bodied men manhandled Perlle and Nely as they were walking home late in the evening and unescorted. *Lastly*, on the occasion thereof, appellant killed Nely with a double-bladed knife.

Their concerted action reveals unity of criminal design in pursuance of a common objective, to rob Perlle and Nely of their personal properties.<sup>33</sup> More, the Court takes judicial notice that in *People v. Diu y Kotsesa*,<sup>34</sup> a verdict of conviction for robbery with homicide was already rendered against appellant's cohorts Diu and Dayaon regarding this same incident. Finding that the assailants acted in conspiracy in committing the crime, the Court held:

Based on Perlle's testimony, as she and Nely were walking along Colorado Street, accused-appellants and De la Cruz were all facing the wall, appearing to be urinating. When Perlle and Nely had passed them by, accused-appellants and De la Cruz accosted them at the same time, with accused-appellant Diu embracing Perlle and taking her bag, and accused-appellant Dayaon and De la Cruz holding on to Nely and stabbing her as she fought back. The actuations of accused-appellants and De la Cruz were clearly coordinated and complementary to one another. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal

- over -

152-B

<sup>32</sup> See *People v. Algarme*, 598 Phil. 423, 446 (2009).

<sup>33</sup> See *Pisingan Chiong v. Republic*, G.R. No. L-15313, March 25, 1961, 1 SCRA 786.

<sup>34</sup> See *People v. Diu*, 708 Phil. 218, 239 (2013).



responsibility. As the RTC declared, “[t]he actions of the three accused, from the deprivation of the eyewitness [Perlie] of her personal belongings by accused Diu to the stabbing of the victim Nely by accused Dayaon and De la Cruz, Jr., are clear and indubitable proofs of a concerted effort to deprive [Perlie] and Nely of their personal belongings, and that by reason or on the occasion of the said robbery, stabbed and killed victim Nely Salvador.” The absence of proof that accused-appellants attempted to stop Nely's killing, plus the finding of conspiracy, make accused-appellants liable as principals for the crime of Robbery with Homicide. (*Emphasis supplied*).

Appellant nevertheless attempts to diminish Perlie's credibility, claiming she could not possibly identify him while the crime was being committed since she herself was preoccupied, struggling from Diu's clutches. At any rate, appellant insists on his defenses of denial and alibi, claiming that at the time of the incident, he was out at sea in Leyte fishing with his uncles.

The arguments deserve scant consideration.

The general defenses of denial and alibi cannot prevail over the positive identification of the accused as the perpetrators of the crime when made by prosecution witness against whom no improper motive can be attributed.<sup>35</sup>

Here, both the trial court and the Court of Appeals could not be faulted for giving full credence to Perlie's straightforward testimony pointing to appellant as the one who stabbed the victim.

*First*, Perlie testified that just as she and her sister Nely walked past appellant, Diu and Dayaon, the three (3) suddenly embraced them; Diu even held her breasts. Indeed, Perlie struggled from Diu's embrace. But this did not prevent Perlie from positively identifying appellant as the one who stabbed her sister Nely. For she personally witnessed appellant stabbing her sister from about four (4) meters, giving her a clear view of the appearances of appellant and his cohorts.

*Second*, Perlie's testimony had already passed the test of credibility in G.R. No. 201449,<sup>36</sup> thus:

Perlie is more than just an eyewitness, she is a surviving victim of the crime. Her testimony, as described by the RTC, was “categorical and straightforward.” Perlie had positively identified

- over -

**152-B**

<sup>35</sup> See *People v. Peñaranda*, 194 Phil. 616-623 (1981).

<sup>36</sup> *Supra* note 34.

both accused-appellants and described specifically the role each played, together with De la Cruz, in the commission of the crime. The physical injuries Perlle and her sister Nely suffered were consistent with Perlle's account of the events of October 3, 2003.

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Once more, accused-appellants are challenging Perlle's credibility. Time and again, the Court has held that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward, and worthy of credence by the trial court, as in the case of Perlle's testimony. The trustworthiness of Perlle's testimony is further bolstered by its consistency and details. In her Sworn Statement executed on October 4, 2003, only a day after the incident, Perlle already mentioned that she and her sister were victims of a "hold-up" and that her shoulder bag, containing P1,800.00 cash and her work uniform, was taken. On the witness stand, under oath, she retold how after embracing her, accused-appellant Diu grabbed her shoulder bag with the P1,800.00 cash, her work uniform, and her other personal belongings. The P1,800.00 cash was not some random amount that Perlle conjured, but it was her salary from the hotel.

*Third*, there is no showing on record that Perlle was impelled by ill motive in testifying against appellant.

Perlle's positive identification of appellant as the one who stabbed Nely to death, therefore, deserves greater credence than appellant's defenses of denial and alibi. For these defenses are inherently weak and cannot overcome the positive identification made by the prosecution witness.<sup>37</sup>

In sum, the Court of Appeals did not err in affirming appellant's conviction of the crime of robbery with homicide.

### ***Penalty***

Under Article 294 of the Revised Penal Code, robbery with homicide is punishable with *reclusion perpetua* to death, viz.:

**Art. 294.** *Robbery with violence against or intimidation of persons — Penalties.* — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of ***reclusion perpetua to death***, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson. (*Emphasis supplied*).

- over -

**152-B**

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<sup>37</sup> Supra note 33.

Since no aggravating circumstance was alleged in the information, the Court of Appeals correctly imposed the penalty of *reclusion perpetua*. Certainly, appellant is not eligible for parole because persons convicted of offenses punishable by *reclusion perpetua* are excluded from availing thereof.<sup>38</sup> The phrase “*without eligibility for parole*,” however, need not borne in the dispositive portion because the phrase is used to qualify the penalty of *reclusion perpetua* only if the accused should have been sentenced to suffer the death penalty had it not been for RA 9346.<sup>39</sup>

As for the monetary awards in favor of the heirs of Nely Salvador, the same should be reduced to ₱75,000.00 each as civil indemnity, moral damages, and exemplary damages and ₱50,000.00 as temperate damages in accordance with *People v. Jugueta*.<sup>40</sup>

Pursuant to the same jurisprudence, Perlie Salvador is entitled to the following: civil indemnity of ₱25,000.00, moral damages of ₱25,000.00 and exemplary damages of ₱25,000.00 plus ₱1,800.00 as actual damages.

**WHEREFORE**, the appeal is **DENIED**. Appellant Cornelio Dela Cruz, Jr., a.k.a. Jay-Ar Dela Cruz is found **GUILTY** of the crime of robbery with homicide and sentenced to **RECLUSION PERPETUA**. He further is ordered to pay:

To the heirs of Nely Salvador:

- a. ₱75,000.00 as civil indemnity;
- b. ₱75,000.00 as moral damages;
- c. ₱75,000.00 as exemplary damages; and
- d. ₱50,000.00 as temperate damages.

- over -

**152-B**

<sup>38</sup> SECTION 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. (Anti-Death Penalty Law, Republic Act No. 9346, [June 24, 2006])

<sup>39</sup> See *People v. Saltarin y Talosig*, G.R. No. 223715, June 3, 2019.

<sup>40</sup> IV. For Special Complex Crimes like Robbery with Homicide, where the penalty consists of indivisible penalties:

- 2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned
  - a. Civil indemnity — P75,000.00
  - b. Moral damages — P75,000.00
  - c. Exemplary damages — P75,000.00

VII. In all of the above instances, when no documentary evidence of burial or funeral expenses is presented in court, the amount of P50,000.00 as temperate damages shall be awarded. (783 Phil. 806 [2016]).

To Perlie Salvador:

- a. ₱25,000.00 as civil indemnity;
- b. ₱25,000.00 as moral damages;
- c. ₱25,000.00 as exemplary damages; and
- d. ₱1,800.00 as actual damages.

All monetary awards are subject to six percent (6%) interest *per annum* from finality of this resolution until fully paid.

**SO ORDERED.”**

Very truly yours,

  
**LIBRADA C. BUENA**  
 Division Clerk of Court *ms/c*

by:

**MARIA TERESA B. SIBULO**  
 Deputy Division Clerk of Court  
**152-B**

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 1229 Makati City

Court of Appeals (x)  
 Manila  
 (CA-G.R. CR HC No. 07578)

The Hon. Presiding Judge  
 Regional Trial Court, Branch 59  
 Angeles City, 2009 Pampanga  
 (Crim. Case No. 03-668)

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Mr. Cornelio Dela Cruz, Jr.  
 Accused-Appellant  
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The Director General  
 Bureau of Corrections  
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*ms/c*