



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 24, 2021** which reads as follows:*

**“G.R. No. 254448 (*Bong Bong Magbojos and Rey Magbojos v. People of the Philippines*).** - The petitioners’ motion for an extension of thirty (30) days within which to file a petition for review on *certiorari* is **GRANTED**, counted from the expiration of the reglementary period.

This is a Petition for Review on *Certiorari*,<sup>1</sup> assailing the Decision<sup>2</sup> dated June 22, 2020 of the Court of Appeals (CA) in CA-G.R. CR No. 41447, which affirmed the conviction of herein petitioners Bong Bong and Rey Magbojos for Homicide under Article 249 of the Revised Penal Code (*RPC*).

The facts are as follows:

On November 14, 2000, one Apolinario Capinpin (*Apolinario*) died as a result of stab wounds.

Investigation into the death of Apolinario led to the pressing of a homicide charge against petitioners before the Regional Trial Court (*RTC*) of Palawan and Puerto Princesa City.<sup>3</sup> During trial, the prosecution presented, among others, the testimonies of eyewitnesses Norman San Juan (*Norman*) and Michael Hinacay (*Michael*). Norman testified that:

- over – eight (8) pages ...

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<sup>1</sup> Under Rule 45 of the Rules of Court

<sup>2</sup> Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Mariflor P. Punzalan Castillo and Walter S. Ong concurring; *rollo*, pp. 23-31.

<sup>3</sup> The case was docketed as Criminal Case No. 16330, raffled to Branch 51 of the Regional Trial Court of Palawan and Puerto Princesa City.

1. Around midnight of November 14, 2000, he, along with four other individuals, were unloading motorcycles in front of a house in Brooke's Point, Palawan. After unloading one motorcycle, he heard a commotion around fifty meters away.
2. He approached the place where the commotion was taking place. There, he saw petitioners stabbing Apolinario—who was known to him as "Amang" Capinpin.
3. He was about 50 meters away from petitioners and Apolinario when he witnessed the stabbing of the latter.

On the other hand, Michael testified:

1. Like Norman, he too was unloading motorcycles in front of a house in Brooke's Point, Palawan.
2. When he looked around, he saw three persons huddled together. Upon further viewing, however, he noticed that two of those persons appear to be boxing the third. He was able to recognize the petitioners as aggressors because all three persons were directly under a street lamp post. Later, he learned that petitioners not only boxed the victim but had, in fact, stabbed the latter.
3. He was about 100 meters away from petitioners and Apolinario when he witnessed the incident.

For the defense, petitioner Rey Magbojos spoke of a different version of events. He claimed that on the night of the supposed crime, he was on-duty as a security guard at the municipal building of Brooke's Point. He was with his fellow security guards, Purisimo Moreno (*Purisimo*) and Nestor Cahayag (*Nestor*). Purisimo and Nestor also testified to corroborate petitioner Rey Magbojos' claim. Petitioner Bong Bong Magbojos, however, did not testify.

On November 27, 2017, the RTC rendered a Decision<sup>4</sup> finding petitioners guilty of homicide. In coming to such decision, the RTC gave full faith and credence to the version of the prosecution. As penalty, the RTC sentenced petitioner to suffer imprisonment of 6 years and 1 day of *prision mayor*, as minimum, up to 14 years, 8

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<sup>4</sup> Penned by Presiding Judge Ambrosio B. De Luna; *rollo*, pp. 32-35.

months and 1 day of *reclusion temporal*, as maximum. The RTC also ordered petitioners to pay the heirs of Apolinario civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱10,000.00, exemplary damages in the amount of ₱10,000.00 and actual damages for burial expenses in the amount of ₱22,300.00. The RTC, however, also decreed “[s]ubsidiary imprisonment in case of insolvency.”<sup>5</sup> The *fallo* of the RTC decision accordingly reads:<sup>6</sup>

WHEREFORE, premises considered, [petitioners] GUILTY (*sic*) beyond reasonable doubt with (*sic*) the crime of HOMICIDE and sentences them to suffer the penalty of imprisonment ranging from SIX (6) YEARS and ONE (1) DAY of *prision mayor*, as minimum, TO FOURTEEN (14) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY of *reclusion temporal*, as maximum.

[Petitioners] are hereby ordered to indemnify the heirs of the victim amounting to Fifty Thousand Pesos (Php 50,000.00) on account of the latter’s death, Twenty-[T]wo Thousand Three Hundred Pesos (Php 22,300.00) for burial and other expenses, Ten Thousand Pesos (Php 10,000.00) as Moral damages and Ten Thousand Pesos (Php 10,000.00) as exemplary damages. Subsidiary imprisonment in case of insolvency.

SO ORDERED.<sup>7</sup>

Petitioners appealed to the CA.

On June 22, 2020, the CA rendered a Decision denying the appeal of petitioners. The appellate court sustained the findings of, and affirmed the prison sentence imposed by, the RTC. The CA, however, made modifications to the damages awarded by the RTC, to wit:

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision dated November 27, 2017 of the Regional Trial Court, Branch 51, Puerto Princesa City, in Criminal Case No. 16330, is AFFIRMED with MODIFICATION, thus:

1. The award of Php22,300.00 for burial and other expenses is DELETED. Instead, [petitioners] are ordered to PAY the heirs of [Apolinario] temperate damages in the amount of Php50,000.00;
2. The award of moral damages is INCREASED to Php50,000.00; and

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<sup>5</sup> *Id.* at 35.

<sup>6</sup> *Id.*

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

3. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this *Decision* until fully paid.

SO ORDERED.<sup>8</sup>

Hence, this petition. In this petition, petitioners merely reiterate the same arguments they interposed in their appeal before the CA. They impugn their identification claiming that the same had been impaired on account of the supposed crime happening at night. Petitioners point out that “*Norman was not able to explain how he was able to see through the darkness that would allow him a reasonable view of [petitioners’] facial features.*”<sup>9</sup> On the other hand, Michael’s identification cannot be relied upon for the latter did not make any “*categorical statement that he saw petitioners [stab] the victim in this case.*”<sup>10</sup>

### ***Our Ruling***

We deny the appeal. However, We see fit to make certain clarifications in the decision of the CA.

### **I**

To start, the appeal of petitioners has no merit.

In challenging the reliability of their identification, petitioners are essentially putting into question the RTC’s appraisal of the credibility of eye-witnesses Norman and Michael. Such kinds of question, however, have a heavy burden to overcome on appeal—much more on appeal before this Court.

It is a well-settled rule that the assessment of a trial court as to matters pertaining to the credibility of witnesses, are accorded great respect—if not finality—on appeal.<sup>11</sup> The rationale behind this rule is the recognition of the trial court’s unique and distinctive position to be able to observe, first hand, the demeanor, conduct and attitude of the witness whose credibility has been put in issue.<sup>12</sup>

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<sup>8</sup> *Id.* at 30.

<sup>9</sup> *Id.* at 17.

<sup>10</sup> *Id.* at 17-18.

<sup>11</sup> *People v. Piosang*, 710 Phil. 519, 526 (2013).

<sup>12</sup> *People v. Costelo*, G.R. No. 134311, October 13, 2009. (Unreported)

While conformity to the foregoing rule is not absolute, it must be underscored that any deviation therefrom is only allowed in light of the presence of highly meritorious circumstances, such as when it is clearly shown that the trial court had “*acted arbitrarily*” or when it is established that the trial court “*overlooked certain facts of substance and of value which, if considered, might affect the outcome of the case.*”<sup>13</sup> None of these circumstances, however, are obtaining in the present case.

The supposed failure of Norman to explain “*how he was able to see through the darkness*” is not fatal to the prosecution’s cause. As aptly pointed out by the CA, any inadequacy in the testimony of Norman was more than supplemented by the testimony of Michael which categorically recalled petitioners and Apolinario to be underneath a street lamp during the stabbing incident.<sup>14</sup> On the other hand, the CA also correctly observed that Michael’s testimony cannot be regarded as any less credible just because he initially mistook Apolinario as being boxed instead of being stabbed by the petitioners. Thus:

Moreover, like Norman, [petitioners] were also identified by Michael as the persons who he thought were merely boxing the victim. That Michael failed to identify the weapons used by [petitioners] is of no moment as the identifications of the weapon is not indispensable to the prosecution’s cause where the accused has been positively identified. What is vital in the testimony is not his knowledge of the weapon used but his identification of the [petitioners]. More importantly, Michael was able to clarify that they were able to recognize the [petitioners] even though the incident happened past midnight because the appellants and the victim were under a street lamp post at the time of the incident.<sup>15</sup>

In fine, We find no cogent reason to deviate from the said finding of the CA.

## II

Be that as it may, certain clarifications must be made in the CA decision, particularly in the award of damages payable by the petitioners.

To recall, the RTC originally ordered petitioners to pay the heirs of Apolinario the following damages:

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<sup>13</sup> *People v. Mali*, 723 Phil. 837, 853 (2013), citing *People v. De Jesus*, 695 Phil. 114 (2012).

<sup>14</sup> *Rollo*, pp. 27-28.

<sup>15</sup> *Id.* at 28. (Citations omitted)

1. Civil indemnity in the amount of ₱ 50,000.00,
2. Moral damages in the amount of ₱ 10,000.00,
3. Exemplary damages in the amount of ₱ 10,000.00 and
4. Actual damages for burial expenses in the amount of ₱22,300.00.

The RTC, moreover, decreed that petitioners shall be subject to “[s]ubsidiary imprisonment in case of insolvency.”<sup>16</sup>

The decision of the CA, on the other hand, **affirmed the RTC decision subject only to the following modifications:**

The amount of moral damages is increased to ₱50,000.00, consistent with *People v. Jugueta*.<sup>17</sup>

1. The amount of actual damages in the amount of ₱22,300.00 is deleted and replaced by temperate damages in the amount of ₱50,000.00.
2. An explicit statement is made in the *fallo* subjecting all monetary awards to interest at the rate of six percent (6%) *per annum* from the date of finality of the decision until fully paid.

**The CA Decision, either in its body or dispositive portion, did not explicitly treat of the RTC’s award of exemplary damages or of the trial court’s pronouncement relating to petitioners’ subsidiary imprisonment in case of insolvency.** Hence, the decision of the CA, as written, gives the impression that the said award and pronouncement are still valid and continues to subsist. This should be corrected.

*First.* The CA should have explicitly provided for the deletion of the award of exemplary damages for lack of basis. In *Jugueta*, the Court clarified that an award for exemplary damages in cases of homicide is only proper when an aggravating circumstance, whether alleged in the information or not, is proven during trial.<sup>18</sup> In this case, however, the decision of the RTC already categorically provided that there was no aggravating circumstance obtaining in the instant case.<sup>19</sup> Hence, the award of exemplary damages is not proper and should not be allowed to subsist.

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<sup>16</sup> *Id.* at 35.

<sup>17</sup> 783 Phil. 806 (2016).

<sup>18</sup> *People v. Jugueta, supra.*

<sup>19</sup> *Rollo*, p. 35.

*Second.* The CA should have also rebuffed the RTC's pronouncement concerning the subsidiary imprisonment of petitioners in case of insolvency. Any possible failure of the petitioners to make good on their liabilities for civil indemnity, moral damages or temperate damages could not give rise to their subsidiary imprisonment. Section 39 of the RPC, as amended by Republic Acts No. 5495 and 10159, clearly provides that subsidiary imprisonment is only allowed in cases when a convict, due to insolvency, is unable to satisfy a penalty of **fine**:

Art. 39. *Subsidiary Penalty.* — **If the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability** at the rate of one day for each amount equivalent to the highest minimum wage rate prevailing in the Philippines at the time of the rendition of judgment of conviction by the trial court, subject to the following rules:

x x x.<sup>20</sup>

Here, petitioners were never meted the penalty of fine. Their penalty consists purely of prison sentences. The award of civil indemnity, moral damages and exemplary damages against them are neither penalties nor fines. Hence, for obvious reasons, subsidiary imprisonment cannot apply to petitioners.

Thus, to obviate confusion—

**WHEREFORE**, premises considered, the instant petition is **DENIED**. The Decision dated June 22, 2020 of the Court of Appeals in CA-G.R. CR No. 41447 is **AFFIRMED** with **MODIFICATION**. Accordingly, judgment is rendered as follows:

1. Petitioners Bong Bong and Rey Magbojos are found **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE**. Each are **SENTENCED** to suffer the penalty of imprisonment ranging from **SIX (6) YEARS and ONE (1) DAY** of *prison mayor*, as minimum, **TO FOURTEEN (14) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY** of *reclusion temporal*, as maximum;
2. Petitioners are **ORDERED** to **PAY** the heirs of Apolinario Capinpin the following:

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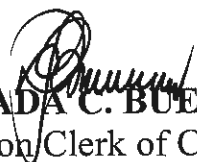
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<sup>20</sup> Emphasis and underscoring supplied.

- a. civil indemnity in the amount of ₱50,000.00,
  - b. moral damages in the amount of ₱50,000.00, and
  - c. temperate damages, *in lieu* of actual damages, in the amount of ₱50,000.00;
3. All monetary awards shall be subject to interest at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid;
  4. The awards of actual damages in the amount of ₱22,300.00 and exemplary damages in the amount of ₱10,000.00, as granted under the Decision dated November 27, 2017 of the Regional Trial Court, Branch 51, of Palawan and Puerto Princesa City, in Criminal Case No. 16330, are hereby **DELETED**; and
  5. The pronouncement “[s]*ubsidiary imprisonment in case of insolvency*,” found in the dispositive portion of Decision dated November 27, 2017 of the Regional Trial Court, Branch 51, of Palawan and Puerto Princesa City, in Criminal Case No. 16330, is **DELETED**.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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Atty. Arnulfo L. Tagle  
Counsel for Petitioners  
2<sup>nd</sup> Floor, Midella Building, Pineda Road  
Puerto Princesa City, 5300 Palawan

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Manila  
(CA-G.R. CR No. 41447)

The Solicitor General  
134 Amorsolo Street, Legaspi Village  
1229 Makati City

The Hon. Presiding Judge  
Regional Trial Court, Branch 51  
Puerto Princesa City, 5300 Palawan  
(Crim. Case No. 16330)

Judgment Division (x)  
Supreme Court



