



Republic of the Philippines
Supreme Court
Manila

SPECIAL FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 177751

Present:

- versus -

LEONARDO-DE CASTRO,
Acting Chairperson,
BERSAMIN,
DEL CASTILLO,
ABAD, and**
VILLARAMA, JR., JJ.

FLORENCIO AGACER,*
EDDIE AGACER,
ELYNOR AGACER,
FRANKLIN AGACER and
ERIC* AGACER,**
Accused-Appellants.

Promulgated:
JAN 07 2013

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RESOLUTION

DEL CASTILLO, J.:

For resolution is appellants' Motion for Reconsideration¹ of our December 14, 2011 Decision² affirming their conviction for the murder of Cesario Agacer, the dispositive portion of which reads as follows:

WHEREFORE, the Court **AFFIRMS** the November 17, 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01543 which affirmed the August 7, 2001 Decision of the Regional Trial Court, Branch 8, Aparri, Cagayan, finding appellants Florencio, Franklin, Elynor, Eddie and Eric, all surnamed Agacer, guilty beyond reasonable doubt of the crime of murder, with the following modifications:

(1) actual damages is **DELETED**;

(2) the appellants are **ORDERED** to pay the heirs of Cesario Agacer ₱25,000.0 as temperate damages; and

(3) the appellants are **ORDERED** to pay the heirs of Cesario Agacer interest at the legal rate of six percent (6%) per annum on all the amounts of

* Deceased as of February 17, 2007. *Rollo*, p. 100.

** Per raffle dated November 14, 2012.

*** Also spelled as Erick in some parts of the records.

¹ *Rollo*, pp. 88-93.

² *Id.* at 67-82.

damages awarded, commencing from the date of finality of this Decision until fully paid.

Costs against appellants.

SO ORDERED.³

Appellants assert that their mere presence at the scene of the crime is not evidence of conspiracy;⁴ that there was no treachery since a heated argument preceded the killing of the victim;⁵ and that even assuming that their guilt was duly established, the privileged mitigating circumstance of minority should have been appreciated in favor of appellant Franklin Agacer (Franklin) who was only 16 years and 106 days old at the time of the incident, having been born on December 21, 1981.⁶

In our February 13, 2012 Resolution,⁷ we required the Office of the Solicitor General (OSG) to comment on the Motion for Reconsideration particularly on the issue of Franklin's minority.

Meanwhile, in a letter⁸ dated June 8, 2012, the Officer-in-Charge of the New Bilibid Prison, informed us that appellant Florencio Agacer (Florencio) died on February 17, 2007, as evidenced by the attached Certificate of Death indicating cardio pulmonary arrest secondary to *status asthmaticus* as the cause of death.⁹

The OSG, in its Comment,¹⁰ asserts that there exists no cogent reason to disturb our findings and conclusions as to the guilt of the appellants since the facts and evidence clearly established conspiracy and treachery. However, it did not oppose and even agreed with appellants' argument that minority should have been appreciated as a privileged mitigating circumstance in favor of Franklin, the same

³ Id. at 81.

⁴ Id. at 89.

⁵ Id. at 89-90.

⁶ Id. at 90-91.

⁷ Id. at 94.

⁸ Id. at 99.

⁹ Id. at 100.

¹⁰ Id. at 111-122.

being duly supported by a copy of Franklin's Certificate of Live Birth secured from the National Statistics Office (NSO) Document Management Division.¹¹

Issues

Hence, the following issues for our resolution:

1. Was the evidence sufficient to establish the existence of conspiracy and treachery in the commission of the crime charged?
2. Should the mitigating circumstance of minority be appreciated in favor of appellant Franklin?
3. Does the death of appellant Florencio extinguish his criminal and civil liabilities?

Our Ruling

There is partial merit in appellants' Motion for Reconsideration.

Reiterated Arguments in a Motion for Reconsideration Do Not Need a New Judicial Determination.

Appellants' contention that the prosecution's evidence is insufficient to prove conspiracy and treachery is a mere rehash of their argument set forth in their brief, "which we already considered, weighed and resolved before we rendered the Decision sought to be reconsidered."¹² It is not a new issue that needs further judicial determination.¹³ There is therefore no necessity to discuss and rule again on this ground since "this would be a useless formality of ritual invariably

¹¹ Id. at 121.

¹² *People v. Larrañaga*, 502 Phil. 231, 240 (2005).

¹³ Id.

involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant.”¹⁴

As a Minor, Franklin is Entitled to the Privileged Mitigating Circumstance of Minority.

Nevertheless, we agree with appellants that Franklin is entitled to the privileged mitigating circumstance of minority. Franklin’s Certificate of Live Birth shows that he was born on December 20, 1981, hence, was merely 16 years old at the time of the commission of the crime on April 2, 1998. He is therefore entitled to the privileged mitigating circumstance of minority embodied in Article 68(2) of the Revised Penal Code. It provides that when the offender is a minor over 15 and under 18 years, the penalty next lower than that prescribed by law shall be imposed on the accused but always in the proper period. The rationale of the law in extending such leniency and compassion is that because of his age, the accused is presumed to have acted with less discernment.¹⁵ This is regardless of the fact that his minority was not proved during the trial and that his birth certificate was belatedly presented for our consideration, since to rule accordingly will not adversely affect the rights of the state, the victim and his heirs.

Penalty to be Imposed Upon Franklin.

Pursuant to the above discussion, the penalty imposed upon Franklin must be accordingly modified. The penalty for murder is *reclusion perpetua* to death. A degree lower is *reclusion temporal*.¹⁶ There being no aggravating and ordinary mitigating circumstance, the penalty to be imposed on Franklin should be *reclusion temporal* in its medium period, as maximum, which ranges from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and

¹⁴ Id. at 239-240, citing *Ortigas and Co. Ltd. Partnership v. Judge Velasco*, 324 Phil. 483, 491 (1996).

¹⁵ *People v. Larrañaga*, 516 Phil. 524, 525 (2006).

¹⁶ Id. at 529.

four (4) months.¹⁷ Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor*, the medium period of which ranges from eight (8) years and one (1) day to ten (10) years. Due to the seriousness of the crime and the manner it was committed, the penalty must be imposed at its most severe range.

The Death of Florencio Prior to Our Final Judgment Extinguishes His Criminal Liability and Civil Liability Ex Delicto.

On the effect of the death of appellant Florencio on his criminal liability, Article 89(1) of the Revised Penal Code provides that:

Art. 89. *How criminal liability is totally extinguished.* – Criminal liability is totally extinguished.

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;

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It is also settled that “[u]pon the death of the accused pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal.”¹⁸

While Florencio died way back on February 7, 2007, the said information was not timely relayed to the Court, such that we were unaware of the same when we rendered our December 14, 2011 Decision. It was only later that we were informed of Florencio’s death through the June 8, 2012 letter of the Officer-in-

¹⁷ Id.

¹⁸ *De Guzman v. People*, 459 Phil. 576, 580 (2003), citing *People V. Bayotas*, G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255.

Charge of the New Bilibid Prison. Due to this development, it therefore becomes necessary for us to declare Florencio's criminal liability as well as his civil liability *ex delicto* to have been extinguished by his death prior to final judgment. The judgment of conviction is thus set aside insofar as Florencio is concerned.

WHEREFORE, appellants' Motion for Reconsideration is **PARTIALLY GRANTED**. Our Decision dated December 14, 2011 is **MODIFIED** as follows: (a) appellant Franklin Agacer is sentenced to suffer the penalty of ten (10) years of *prision mayor* in its medium period, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* in its medium period, as maximum, and (b) the criminal liability and civil liability *ex delicto* of appellant Florencio Agacer are declared **EXTINGUISHED** by his death prior to final judgment. The judgment of conviction against him is therefore **SET ASIDE**.

SO ORDERED.



MARIANO C. DEL CASTILLO

Associate Justice

WE CONCUR:



TERESITA J. LEONARDO-DE CASTRO

Associate Justice

Chairperson



LUCAS P. BERSAMIN

Associate Justice



ROBERTO A. ABAD

Associate Justice



MARTIN S. VILLARAMA, JR.

Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


TERESITA J. LEONARDO-DE CASTRO

Associate Justice

Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice