

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJIE CONSORTE Y FRANCO, ACCUSED-APPELLANT.

G.R. No. 194068. November 26, 2014

Ponente: PEREZ, J.

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PEREZ, J.:

For the resolution of the Court is the Motion for Reconsideration[1] of our Decision dated 9 July 2014,[2] which affirmed the conviction of accused-appellant Benjie Consorte y Franco for the murder of Elizabeth Palmar, the dispositive portion of which reads:

WHEREFORE, the Decision of the Court of Appeals dated 27 May 2010 in CA-G.R. CR HC No. 01806 is AFFIRMED with the following MODIFICATIONS (1) that the amount of civil indemnity is increased from P50,000.00 to P75,000.00; and (2) that the amount of exemplary damages is increased from P25,000.00 to P30,000.00. An interest, at the rate of six percent (6%) per annum shall be imposed on all the damages awarded in this case from the date of finality of this judgment until they are fully paid.

SO ORDERED.[3]

Accused-appellant raises the incredibility of his identification as the perpetrator of the crime.[4] He avers that despite the alleged positive identification made by Rolando Visbe (Visbe), the testimony of prosecution witness Aneline Mendoza clearly shows the impossibility of the same.[5] Moreover, further casting doubt on the alleged identification of accused-appellant is Visbe's unbelievable and inconsistent statements on how such identification was made.[6]

Meanwhile, in a Letter dated 21 September 2014,[7] the Officer-in-Charge of the New Bilibid Prison (NBP) informed the Court that accused-appellant died on 14 July 2014, as evidenced by the attached Death Certificate issued by NBP Medical Officer III Ruth B. Algonos, M.D.[8]

Owing to this development, the Court now addresses the effect of death pending accused-appellant's appeal with regard to his criminal and civil liabilities.

Article 89' (1) of the Revised Penal Code is illuminating:

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;

x x x x

In *People v. Brillantes*,[9] the Court, citing *People v. Bayotas*,[10] clarified that:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely

on the offense committed, i.e., civil liability ex delicto in senso strictiore."

In the case at bar, accused-appellant died before final judgment, as in fact, his motion for reconsideration is still pending resolution by the Court. As such, it therefore becomes necessary for us to declare his criminal liability as well as his civil liability ex delicto to have been extinguished by his death prior to final judgment.[11]

WHEREFORE, the criminal and civil liability ex delicto of accused-appellant Benjie Consorte y Franco are declared EXTINGUISHED by his death prior to final judgment. The judgment or conviction against him is therefore SET ASIDE.

SO ORDERED

Sereno, C.J.[*] Carpio, (Chairperson), Del Castillo, and Reyes, JJ.,[**] concur.

[*] Per Special Order No. 1886 dated 24 November 2014.

[**] Per Special Order No. 1881 dated 25 November 2014.

[1]Rollo, pp. 62-69.

[2] Id. at 48-59.

[3] Id. at 58.

[4] Id. at 65.

[5] Id. at 63.

[6] Id.

[7] Id. at 60.

[8] Id. at 61.

[9] G. R. No. 190610, 25 April 2012, 671 SCRA 388,393.

[10] G.R. No. 102007, 2 September 1994, 236 SCRA, 255-256.

[11] People v. Agacer, G.R. No. 177751, 7 January 2013, 688 SCRA 42, 49.

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