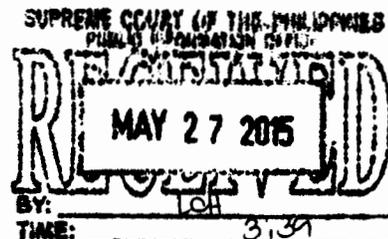




Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated April 20, 2015, which reads as follows:

“G.R. No. 209612 - PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. DIOMEDES ALMERIA, MANUEL PORCA, and GODOFREDO FUMAR, Accused, DIOMEDES ALMERIA and GODOFREDO FUMAR, Accused-Appellants.

In an Information filed before the Regional Trial Court (RTC) of Tacloban City, Leyte, Branch 6, and docketed as Criminal Case No. 97-04-189, accused Diomedes M. Almeria (Almeria), Manuel P. Porca (Porca), and Godofredo P. Fumar (Fumar), together with a “John Doe,” were charged with the crime of Robbery with Homicide, allegedly committed as follows:

That on or about the 20th day of February, 1997 in the Municipality of Palo, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused[,] one of whom is called by the alias name “JOHN DOE” considering that his name has not yet been determined up to the present time, with intent to gain, by means of violence against persons, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously take, rob and carry away money in the amount of ₱50,000.00, Philippine Currency, belonging to the spouses Jose Uy and Rosita Uy, against their will and to their prejudice in the amount aforestated; That on the occasion and/or by reason of said robbery, the aforesaid accused, with intent to kill, with treachery and abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and stab the said Jose Uy and Rosita Uy with the use of a (sic) sharp bladed weapons, thereby inflicting multiple wounds on

- over - nine (9) pages

different parts of the victims' body which directly caused their death shortly thereafter.

Contrary to law, with the aggravating circumstance of dwelling, the victims not having given provocation.¹

When arraigned, Almeria (then represented by the Public Attorney's Office [PAO]), pleaded guilty; while Porca and Fumar (then represented by Atty. Leo S. Giron [Giron] and Atty. Von Kaiser P. Soro, respectively) pleaded not guilty. Thereafter, trial ensued.

Below is the version of events of the prosecution:

Spouses Jose Uy and Rosita Uy are jeepney owners with routes plying Palo, Leyte and Tacloban City and vice versa. They resided in Barangay Guindapunan, Palo, Leyte, together with their son, William Uy[,] who is the registered owner and operator of the jeepneys. The residence of the spouses served at the same time as the garage of the jeepneys after 7:00 pm.

Accused Manuel Porca with accused Diomedes Almeria as conductor operates one of the jeepneys owned by the spouses in the year 1996. When the jeepney driven by Manuel Porca had an accident which was perceived by Manuel Uy as a fault on [the] part of Porca and thus, Porca was terminated on December 22, 1996.

Then on February 20, 1997, between 6:00 and 7:00 in the evening, Spouses Uy met horrible deaths in [their] residence[.] Jose Uy, a 69-year old man with polio, was killed by sustaining five (5) stab wounds which punctured the upper left and right lung and heart and penetrated the thoracic cavity, seven (7) punctured wounds on the chest which penetrated the thoracic cavity, upper and left lobe of the lung and stomach, two contusions and one hematoma. On the other hand, his wife Rosita Uy, a 65-year old woman, obtained six (6) stab wounds, which penetrated the upper left and right lobe of the lungs and the thoracic cavity, five incised wounds at the anterior portion of the neck and under the Adam's apple, incised wound at the upper left portion of the chest at the level of the second rib and incised wound at the left hand. Their bodies were found by their son Manuel Uy when he arrived home from work around 7:30 p.m. The body of Rosita Uy was found on the floor with her neck dangling when lifted and almost severed. On the other hand, Jose Uy's body was beside the refrigerator drenched with blood and arms stiff.

Bernie Teraza, a witness for the prosecution, provided the police with the sketch of the two people he saw on the premises of the deceased victims on the said date of incident. On the other hand, Bienvenido

¹ CA rollo, pp. 6-7.

Engracial, the lone witness to the gruesome killing, testified that he saw the horrifying act being performed on the old couple and was able to identify the perpetrators because the witness often see the accused in public places. x x x.²

The evidence for the defense consisted of the following:

Accused Diomedes Almeria waived his right to present evidence for his behalf.

Accused Godofredo Fumar testified that on February 20, 1997 at about 6:00 o'clock in the evening, he was in his house watching over his children because his wife went to the market to buy food for dinner. He and his family had dinner at around 8:00 o'clock. He only knew of the killing of the spouses Uy at past 8:00 o'clock when he heard about this from his neighbors. He had no participation in the commission of the crime. Diomedes Almeria only pointed him because he was involved in the plan but he never went through with its execution.

Accused Manuel Porca testified that he used to drive one of the jeepneys owned by William Uy, up to the year 1996. He then worked for Master Sgt. Teodora Zamora as a driver of their service jeepney. He only stopped driving for Zamora on February 23, 1997 when he was arrested. He was told by the police that he was pointed by Diomedes Almeria. He knows Almeria because the latter was a conductor of the jeepney that he drove for William Uy, son of the spouses Jose and Rosita Uy.³

On November 18, 2002, the RTC promulgated its Decision with a dispositive portion that reads:

WHEREFORE, premises considered, the court finds accused DIOMEDES ALMERIA, GODOFREDO FUMAR and MANUEL PORCA guilty beyond reasonable doubt with the crime of Robbery with Homicide and the commission of the crime having been attended with three aggravating circumstances of dwelling, abuse of superior strength and evident premeditation, sentences each of the accused to suffer the maximum penalty of DEATH imposed by law. All the three accused are ordered to pay in solidum the heirs of the deceased spouses civil indemnity of Pesos: One Hundred Thousand (₱100,000.00), moral damages of Pesos: One Hundred Thousand (₱100,000.00), and the sum of Pesos: Six Hundred Forty[-Five] and 15/100 (₱645.15/100) is hereby directed returned to the heirs of the late spouses Jose Uy and Rosita Uy.⁴

² Id. at 171-173; Appellee's Brief filed by the Office of the Solicitor General before the Court of Appeals.

³ Id. at 123-124; Brief for the Accused-Appellants Diomedes Almeria and Godofredo Fumar filed by Attys. Maria G-Ree R. Calinawan and Ivy C. Gonzales of the Public Attorney's Office before the Court of Appeals.

⁴ Id. at 99; penned by Judge Santos T. Gil.

Because the capital punishment was imposed by the RTC, the case was forwarded to the Court on automatic appeal, where it was docketed as G.R. No. 162544.

In the meantime, Almeria, Porca, and Fumar were received for confinement at the New Bilibid Prison on December 29, 2002.

In a Resolution dated August 24, 2004, the Court transferred G.R. No. 162544 to the Court of Appeals pursuant to *People v. Mateo*.⁵ The case was docketed as CA-G.R. CR.-H.C. No. 00013 before the Court of Appeals in Cebu City.

Atty. Giron filed a Brief for Porca, which, although belatedly filed, was admitted in the interest of justice by the Court of Appeals in a Resolution dated December 23, 2010. The PAO filed a joint Brief for Almeria and Fumar, while the Office of the Solicitor General (OSG) filed a Brief for the People of the Philippines (People).

The Court of Appeals rendered a Decision⁶ on July 31, 2013, affirming the RTC judgment of conviction against Almeria, Porca, and Fumar, but considering the effectivity of Republic Act No. 9346, which prohibited the imposition of the death penalty, modified the sentence imposed, thus:

WHEREFORE, the instant appeal is **DENIED**. The Decision dated November 18, 2002 of the RTC is **AFFIRMED with modification**. Accused-appellants are sentenced to *reclusion perpetua*. They are directed to pay ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. They are also ordered to return the amount of ₱645.15 to the heirs of the victims, the spouses Jose Uy and Rosita Uy.⁷

From the foregoing judgment of the Court of Appeals, only the PAO, representing Almeria and Fumar, filed a Notice of Appeal.⁸ In a Resolution dated September 30, 2013, the appellate court noted said Notice of Appeal; gave due course to the appeal; and directed the Chief of the

⁵ 477 Phil. 752 (2004).

⁶ CA *rollo*, pp. 200-218; penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Edgardo L. delos Santos and Pamela Ann Abella Maxino, concurring.

⁷ *Id.* at 217-218.

⁸ *Id.* at 221-223.

Judicial Records to forward the records of the case to the Court for the purpose of said appeal.

The appeal of Almeria and Fumar before the Court was docketed as G.R. No. 209612.

The Court issued a Resolution dated December 9, 2013 requiring the parties to file their respective supplemental briefs, if they so desire.

In a Manifestation dated December 18, 2013, the PAO filed a Manifestation giving the Court notice that Fumar already passed away on October 10, 2013. The PAO subsequently submitted a certified true copy of Fumar's Certificate of Death.⁹

The PAO also submitted a Motion to Withdraw Appeal (Accused-appellant Diomedes Almeria) dated February 26, 2014. The PAO attached to said Motion Almeria's letter dated November 27, 2013 to his counsel, written in Filipino, stating Almeria's intent not to pursue his appeal before the Court and instead apply for Executive Clemency. Consequently, the PAO prayed that the case be declared withdrawn and considered closed and terminated.

In a Certification dated July 25, 2014, Chief Alvin Herrera Lim of the Legal Office, Bureau of Corrections, certified that he personally examined Almeria and was fully satisfied that the latter voluntarily executed and understood the attached Withdrawal of Appeal. Attached to the said Certification was another letter dated July 25, 2014 signed by Almeria addressed to Chief Superintendent Roberto R. Rabo of the New Bilibid Prison, in which the former wrote:

I would like to respectfully inform your good Office that I truly [sent] a letter to my counsel de officio dated November 27, 2013 stating my intention not to [pursue] & withdraw my appeal filed at the Supreme Court, Manila.

x x x x

My decision is final and I really know and understand the consequences of withdrawing said appeal.¹⁰

⁹ *Rollo*, pp. 83-84.

¹⁰ *Id.* at 66.

For its part, the OSG filed for the People a Manifestation and Motion (in lieu of Supplemental Brief), submitting that its position on the merits of the case had been adequately discussed in the Brief filed before the Court of Appeals and, hence, it no longer desired to file a supplement to the said pleading. In compliance with a Resolution dated April 21, 2014, the OSG eventually filed a Comment interposing no objection to Almeria's motion to withdraw his appeal.

Presently pending action by the Court are the Manifestation on Fumar's death and Almeria's Motion to Withdraw Appeal.

Article 89(1) of the Revised Penal Code provides:

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[.]

In *People v. Bayotas*,¹¹ the Court clarified the effect of the accused's death pending appeal on his liabilities, viz.:

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*."

2. Corollarily, the claim for civil liability survives notwithstanding the death of [the] accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

- a) Law
- b) Contracts
- c) Quasi-contracts
- d) x x x
- e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the

¹¹ G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255-256.

1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with [the] provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.

In the present case, Fumar's death extinguished his criminal liability. Moreover, because Fumar died during the pendency of the appeal and before the finality of the judgment against him, his civil liability arising from the crime or delict (civil liability *ex delicto*) was also extinguished. It must be added, though, that his civil liability may be based on sources of obligation other than delict. For this reason, the victims' heirs may file a separate civil action against Fumar's estate, as may be warranted by law and procedural rules.¹² Consequently, the case should be dismissed with regard to Fumar.

As for Almeria's Motion to Withdraw Appeal, the following pronouncements of the Court in *People v. Paradeza*¹³ is significant:

It is not amiss to point out that at this time the case is not yet submitted for our decision. The only question before us now is whether or not to grant appellant's motion to withdraw his appeal.

Under Rule 50, Section 3 of the 1997 Rules of Civil Procedure, the withdrawal of an appeal is a matter of right before the filing of the appellee's brief. After that, withdrawal may be allowed in the discretion of the court. Said Rule is applicable to this case pursuant to Rule 124, Section 18 of the 2000 Rules of Criminal Procedure. In the present case, accused-appellant's motion to withdraw his appeal was made only after the OSG had filed his Reply Brief per its Resolution dated December 10, 2001. It could therefore be said that the accused-appellant had not yet completed the process of filing briefs when he moved to withdraw his appeal, a situation which may call for a more liberal rule. Additionally, it is our impression that from the records of this case, appellant is hardly literate functionally and of very low socio-economic standing as a mere *bangus* fry catcher. In making his appeal, he is actually wagering his life

¹² *People v. Abungan*, 395 Phil. 456, 462 (2000).

¹³ 445 Phil. 127, 134-136 (2003).

as against his sentence below, a point not often stressed to or understood by the convict. In any event, we are persuaded that this Court admittedly has the discretion whether to grant or not the withdrawal sought.

An appeal is a “resort to a superior (*i.e.*, appellate) court to review the decision of an inferior (*i.e.*, trial) court or administrative agency.” As a statutory remedy to correct errors which might have been committed by the lower court, the object of an appeal is simply and solely the protection of the accused. The right to appeal is a mere statutory privilege and is not a natural right or part of the due process. Like any other right or privilege, it may be waived. If a fundamental right of an accused enshrined in the Bill of Rights, such as the right against self-incrimination or the right to remain silent, among others, may be deemed waived depending on the circumstances of a given case, then with more reason may the right to appeal, which is merely statutory, be also waived validly, subject as in this case to the sound discretion of the Court.

A person accused and convicted of an offense may withdraw his appeal not only because he is guilty as charged. There could be other reasons. It could be due to his prior erroneous perception of the applicable provision of law, or of the decision itself. He may feel that to seek a pardon might be the better and faster remedy. Regardless of his reasons, in our view, he is within his rights to seek the withdrawal of his appeal. This option should not be closed to herein accused-appellant except for clearly important substantial reasons of law and policy.

Appellant in withdrawing his appeal has accepted and recognized that the trial court’s judgment of conviction and his sentence thereunder is conclusive upon him. He will remain in custody of the law and will continue to serve the sentence imposed by the lower court as the final verdict. His action should also be viewed as showing full respect for the ultimate authority of this Court, an essential element for an effective criminal justice system under the rule of law in a democratic society. His exercise of the option to withdraw appeal before the case is submitted for this Court’s decision, but fully cognizant of its legal consequences at this stage of the case, not only saves the Court precious time and resources. It also opens soonest the path for the reformation of the contrite offender, pursuant to the ideal of a just and compassionate society envisioned in our fundamental law. Considering the particular circumstances of this case, this Court is not without justifiable reasons to act favorably on his motion.

In the case at bar, the Court is satisfied that Almeria knowingly and voluntarily moved for the withdrawal of his appeal, choosing instead to seek recourse from the executive branch. Therefore, in the exercise of its discretion, the Court grants Almeria’s motion.

WHEREFORE, the Court hereby **RESOLVES** to:

(a) **SET ASIDE** the Decision dated July 31, 2013 of the Court of Appeals in Cebu City in CA-G.R. CR.-H.C. No. 00013 and to **DISMISS** Criminal Case No. 97-04-189 before the Regional Trial Court of Tacloban City, Leyte, Branch 6, as to Godofredo P. Fumar, by reason of his death;

(b) **GRANT** the Motion to Withdraw Appeal of Diomedes M. Almeria; and

(c) **DECLARE** the instant case **CLOSED and TERMINATED.**

SO ORDERED.”

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court ^{11/18}
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The Solicitor General (x)
Makati City

Court of Appeals
6000 Cebu City
(CA-G.R. CR H.C. No. 00013)

The Director
Bureau of Corrections
1770 Muntinlupa City

The Hon. Presiding Judge
Regional Trial Court, Br. 6
Tacloban City 6500 Leyte
(Crim. Case No. 97-04-189)

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Mr. Godofredo Fumar
Accused-Appellant
(Deceased)

SR

