

THIRTEENTH DIVISION

[CA-G.R. CR HC No. 04753, February 28, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCOS CALIBOSO Y AGRABANTE, ACCUSED-APPELLANT.**

D E C I S I O N

YBAÑEZ, J.:

This is an appeal from the Decision dated 18 October 2010, of the Regional Trial Court, Branch 214, Mandaluyong City, in Criminal Case No. MC-08-11572 for Murder, finding the accused guilty as charged, the dispositive portion of which states:

“WHEREFORE, premises considered, this Court finds accused MARCOS CALIBOSO Y AGRABANTE GUILTY beyond reasonable of the crime of Murder. Although the imposable penalty for the offense of Murder is Death, in consideration of Republic Act No. 9346 or the Act Prohibiting the Imposition of the Death Penalty, this court, is constrained to impose and hereby imposes only the penalty of reclusion perpetua. Accused is ordered to pay the heirs of Joseph S. Rolloque the amount of P27,801.50 as actual damages representing funeral, medical and transportation expenses, P75,000.00 as civil indemnity, and P50,000.00 as moral damages. Further, lost earning capacity in the amount of P1,896,595.20 is awarded as enunciated in People of the Philippines vs. Rolly Gidoc.

SO ORDERED.”^[1]

The Facts

On 1 July 2007, at around 8:00 o'clock in the evening, Roberto Nicolas was at his house located at Block 39 Welfareville Compound, Mandaluyong City, when he heard a commotion at the house of his neighbor, Joseph Rolloque, located across the street. Roberto saw Marcos Caliboso step out of Rolloque's house and fled away. Calaboso returned to Rolloque's house accompanied by five (5) other men. Caliboso kept shouting at Rolloque, telling him to come out of the house and face him.^[2]

Afterwards, Alvin De Villa, Rolloque's brother-in-law arrived. De Villa tried to pacify Caliboso but the latter punched De Villa on the face.^[3] De Villa fled away and went to the nearby Police Precinct for assistance.^[4] Caliboso and his companions then began pushing Rolloque's wooden wall in order to break it down and succeeded.^[5]

Subsequently, Caliboso began throwing stones at Rolloque.^[6] The latter fled his house but stumbled in the middle of the road not far from Caliboso.^[7] Caliboso and his companions caught up with Rolloque and started hitting him on the head with

pieces of wood. Caliboso and his companions took turns in hitting Rolloque with pieces of wood on the head.

During the affray, one of the malefactors grabbed a hollow block and dropped the same on Rolloque's head. Thereafter, a bystander shouted "tama na, patay na yang ginarote niyo". Caliboso and his companions then fled away and left Rolloque. Rolloque was rushed to a nearby hospital where he eventually died.

On 3 July 2007, Marina Rolloque, mother of Joseph requested the Philippine National Police Crime Laboratory for an autopsy of the cadaver of Joseph Rolloque. Dr. Emmanuel Aranas conducted the autopsy. Dr. Aranas concluded that Joseph Rolloque found that the latter sustained fractures in his skull which caused massive bleeding inside his brain which caused his proximate death. Dr. Aranas said that such fractures may be caused by a hard blunt object such as a piece of wood.

On 10 March 2008, Marcos Caliboso, alias Teddy was charged in an Information dated 7 February 2008 for the crime of Murder defined and punishable under Article 248 of the Revised Penal Code. Said Information alleges that:

That on or about the 01st of July 2007, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating together with two (unidentified persons whose true identities and present whereabouts are still unknown, with intent to kill, armed with a piece of wood and stones, with abuse of superior strength which qualify such killing to murder did, then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of Joseph Rolloque by then and there beating, hitting him in different parts of his body and smashing his face, thereby inflicting upon the latter injuries which directly caused his instantaneous death.

CONTRARY TO LAW.^[8]

On 28 January 2009, accused Marcos Caliboso, assisted by counsel *de officio*, pleaded Not Guilty to the crime charged.^[9]

On 25 February 2009, pre-trial was held. Thereafter, trial ensued.

In a Decision dated 18 October 2010,^[10] the trial court found the accused guilty of the crime charged and ordered him to pay the heirs of victim Joseph Rolloque the amount of P27,801.50 as actual damages, P75,000.00 as civil indemnity and P50,000.00 as moral damages, plus P1,896,595.20 for loss of earning capacity.

Undaunted, the accused perfected the instant appeal, contending that: