

REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila  
SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **10 February 2020** which reads as follows:*

**“G.R. No. 249902 (Atilano Lavador v. People of the Philippines).** – After a judicious study of the case, the Court resolves to **DENY** the instant petition and **AFFIRM with MODIFICATION** the November 29, 2018 Decision<sup>1</sup> and the August 29, 2019 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CEB-CR No. 02969 for failure of petitioner Atilano Lavador (petitioner) to sufficiently show that the CA committed any reversible error in affirming his conviction for two (2) counts of the crime of Frustrated Homicide, defined and penalized under Article 249 of the Revised Penal Code. Accordingly, petitioner is sentenced to suffer the following penalties: (a) in Criminal Case No. DNO-2720, the penalty of imprisonment for an indeterminate period of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, and to pay private respondent Narciso Bayo (Narciso) the amounts of ₱25,000.00 as temperate damages, ₱30,000.00 as civil indemnity, and ₱30,000.00 as moral damages; and (b) in Criminal Case No. DNO-2721, the penalty of imprisonment for an indeterminate period of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, and to pay private respondent Erwin Sumargo (Erwin) the amounts of ₱204,622.87 as actual damages, ₱30,000.00 as civil indemnity, and ₱30,000.00 as moral damages. Moreover, all monetary awards shall earn an interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until full payment.

As correctly ruled by the CA, all the elements<sup>3</sup> of the crimes charged were successfully established by the prosecution, as it was shown that petitioner, with

<sup>1</sup> *Rollo*, pp. 34-46. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Louis P. Acosta and Emily R. Aliño-Geluz, concurring.

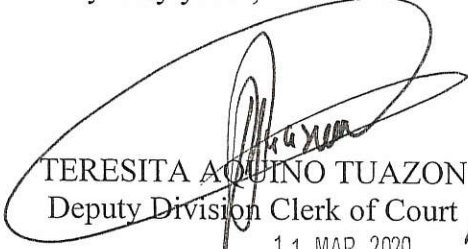
<sup>2</sup> *Id.* at 64-67. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Emily R. Aliño-Geluz and Dorothy P. Montejo-Gonzaga.

<sup>3</sup> In cases of Frustrated Homicide, the prosecution must prove beyond reasonable doubt that: (a) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (b) the victim sustained a fatal or mortal wound but did not die because of timely medical assistance; and (c) none of the qualifying circumstances for murder under Article 248 of the RPC, as amended, are present. (See *Miranda v. People*, G.R. No. 234528, January 23, 2019, citing *De Guzman, Jr. v. People*, 748 Phil. 452, 458 [2014].)

the use of a deadly firearm, inflicted fatal gunshot wounds on Narciso and Erwin, which could have resulted in their deaths if not for the timely medical intervention given to them.<sup>4</sup> It bears stressing that factual findings of trial courts, especially when affirmed by the CA, deserve respect and finality by this Court,<sup>5</sup> and although there are recognized exceptions to this rule,<sup>6</sup> none of which obtain in this case.

**SO ORDERED.”**

Very truly yours,

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court  
11 MAR 2020 P 3/11

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(DNO-2720 & DNO-2721)

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\*with copy of CA decision dated 29 Nov. 2018 &  
CA resolution dated 29 August 2019  
*Please notify the Court of any change in your address.*  
GR249902. 02/10/20(273)URES

<sup>4</sup> See *rollo*, pp. 39-40.

<sup>5</sup> See *Pacific Airways Corporation v. Tonda*, 441 Phil. 156, 162 (2002).

<sup>6</sup> See *Spouses Aboitiz v. Spouses Po*, G.R. Nos. 208450 and 208497, June 5, 2017, 825 SCRA 457, 499.