

SECOND DIVISION

[G.R. NO. 170361, September 25, 2007]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JUAN DELA TONGA
Y PERANTE, APPELLANT.**

R E S O L U T I O N

CARPIO, J.:

This is an appeal interposed by appellant Juan dela Tonga y Perante (appellant) from the Decision dated 28 July 2005 of the Court of Appeals^[1] in CA-G.R. CR HC No. 00702 which affirmed the Decision dated 3 July 2002 of the Regional Trial Court^[2] (RTC) of Malabon City, Branch 170, in Criminal Case No. 20004-MN finding him guilty of the crime of Murder and sentencing him to suffer the penalty of *reclusion perpetua*.

At around 3:00 a.m. of 4 October 1998, Reynaldo Galura (Galura) was on his way home in Dagat-Dagatan, Malabon together with his two companions, Ernie Demate (Demate) and Rannie Garcia (Garcia). While walking along Maya-Maya St., they saw a group of six persons, four of whom were later identified as appellant, Rodel Escabal, Randy Manzano, and Paolo Manuel (the other three accused) coming from the opposite direction and walking towards them. As they passed the group, Galura stopped to relieve himself. Suddenly, appellant and the other three accused attacked Galura with a lead pipe and stones. Galura shouted for help. Demate and Garcia were only about five meters away but the other accused prevented Demate and Garcia from helping Galura by throwing stones at them. Galura's companions could only watch appellant and the other three accused who were ganging up on him by repeatedly hitting him with stones and the lead pipe. When Galura fell face down on the ground, appellant and the other accused fled. Demate and Garcia approached Galura and brought him home. Galura's father brought him to the Jose Reyes Memorial Hospital where he was treated. When Demate visited Galura at the hospital, he saw stab wounds on his back.

Appellant and the other three accused were arrested. The following day, they were accompanied by the police inspector to the hospital for identification by Galura who was still alive. Galura pointed to appellant and the other accused as his assailants. They were charged with the crime of Frustrated Murder. Five days after the incident, Galura died. The Information was amended charging appellant and the other accused of the crime of Murder. They pleaded not guilty upon arraignment. After trial, the RTC rendered judgment finding them guilty beyond reasonable doubt of the crime of Murder attended by treachery. Rodel Escabal and appellant were sentenced to suffer the penalty of *reclusion perpetua*, while Randy Manzano and Paolo Manuel, who were still minors at the time of the commission of the offense, were sentenced to suffer the indeterminate penalty of 10 years of *prision mayor* as minimum to 17 years of *reclusion temporal* as maximum. All of them were likewise ordered to pay the heirs of Galura the amount of P50,000 by way of civil indemnity