

## SECOND DIVISION

[ G.R. No. 154579, October 08, 2003 ]

**MA. LOURDES R. DE GUZMAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### R E S O L U T I O N

**CALLEJO, SR., J.:**

The instant petition for review under Rule 45 assails the Decision<sup>[1]</sup> of the Court of Appeals dated November 29, 2001 and the subsequent Resolution dated August 1, 2002 denying the motion for reconsideration. The CA affirmed with modification the decision of the Regional Trial Court, Makati City, Branch 145 in Criminal Case No. 96-1226,<sup>[2]</sup> finding herein petitioner, Ma. Lourdes de Guzman guilty beyond reasonable doubt of Theft.

The Information filed on July 9, 1996 reads as follows:

That on or about the 8<sup>th</sup> day of February, 1995, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously with intent of gain and without the consent of the owner thereof, take, steal and carry away several pieces of jewelry valued at P4,600,000.00 belonging to one Jasmine Gongora, to the damage and prejudice of the said owner in the aforementioned amount of P4,600,000.00.<sup>[3]</sup>

After due hearing, the trial court rendered its judgment on December 11, 1997, the dispositive portion of which reads:

WHEREFORE, the guilt of the accused having been sufficiently established by proof beyond reasonable doubt, the Court hereby finds the accused MA. LOURDES DE GUZMAN GUILTY of the present charge of THEFT and committed without aggravating circumstance charged nor mitigating circumstance proved and applying the Indeterminate Sentence Law, sentences her to suffer the minimum penalty of FOUR (4) YEARS and NINE (9) MONTHS and TEN (10) DAYS of *prision correccional*, and the maximum penalty of TWENTY (20) YEARS of *reclusion temporal*, as well as the penalties accessory thereto.

The Court further finds the accused MA. LOURDES DE GUZMAN civilly liable and orders her to pay the private offended party, JASMINE GONGORA the sums of FOUR MILLION SIX HUNDRED FORTY THOUSAND PESOS (P4,640,000.00) representing the value as proven of the stolen jewelries; FIVE HUNDRED THOUSAND PESOS (P500,000.00) in moral

damages and TWO HUNDRED THOUSAND PESOS (P200,000.00) as reasonable attorneys fees and litigation expenses.<sup>[4]</sup>

On appeal, the CA affirmed the conviction but reduced the award of damages, to wit:

WHEREFORE, upon the premises, We AFFIRM the decision appealed from with the MODIFICATION that the award for actual damages is reduced to P1,500,00 and moral damages to P100,000. The award for attorney's fees is DELETED.<sup>[5]</sup>

Hence, this petition filed on September 24, 2002, raising the same issues in the CA that the decision of the trial court was tried and decided by a biased judge; and that the judgment of conviction was not proven beyond reasonable doubt.

The Court required the Office of the Solicitor General (OSG) to comment.

On January 30, 2003, counsel for the petitioner filed a Manifestation informing the Court that the petitioner passed away on January 13, 2003.<sup>[6]</sup> The death of the petitioner resulted from a vehicular accident, as indicated in the Certificate of Death attached thereto.<sup>[7]</sup>

At issue now before the Court is the effect of petitioner's death on the instant petition.

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

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 therefore is extinguished only when the death of the offender occurs before final judgment;

...

The issue as to whether an action on the civil liability can survive and proceed against the estate of the deceased has been settled in the case of *People v. Bayotas*<sup>[8]</sup> where it was held that:

Upon death of the accused pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal.<sup>[9]</sup>

The pecuniary liabilities adjudged against the petitioner are undeniably *ex delicto*. The petitioner was ordered to pay actual damages, which is the value of the pieces of jewelry allegedly taken from the private complainant in the amount of P1,500,000, as modified by the Court of Appeals; and moral damages of P100,000 for the fear and trauma caused to the complainant because of the petitioner's intrusion into her bedroom. These civil liabilities arose from the crime of Theft and are based solely on said *delict*.