



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **March 22, 2023** which reads as follows:

“G.R. No. 260029 (Alterhope Yamba a.k.a. “Federico Yamba” a.k.a. “Boboy Yamba” and Ferdinand Yano v. People of the Philippines).— The Court resolves to **DENY** the Verified Petition for Review¹ for failure to sufficiently show any reversible error in the assailed judgment as to warrant the exercise of this Court’s discretionary appellate jurisdiction pursuant to Section 6, Rule 45 of the Rules of Court, and for lack of merit in the appeal pursuant to Sec. 5, Rule 45 in relation to Sec. 5 (b), Rule 56 of the Rules of Court.

The penalty imposed by the Court of Appeals should, however, be modified pursuant to Article 309 (7)² (instead of Art. 309 [6]) in relation to Art. 308 (3) of the Revised Penal Code (RPC), as the coconut trees were located inside a fenced area, and petitioners did not have permission to gather the coconuts. Thus:

Article 309. Penalties. - Any person guilty of theft shall be punished by:

x x x x

6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed 5 pesos.

7. *Arresto menor* or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provision of any of the five preceding subdivisions shall be made applicable.

¹ *Rollo*, pp. 3-13.

² Prior to its amendment by Republic Act No. 10951, entitled “AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS ‘THE REVISED PENAL CODE,’ as amended,” which was approved on August 29, 2017.

x x x x

Article 308. Who are liable for theft. - x x x

Theft is likewise committed by:

x x x x

3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather cereals, or other forest or farm products.

Applying Art. 309 (7) of the RPC, the maximum of the indeterminate penalty shall be taken from the medium range of *prision correccional* (two degrees higher than *arresto menor*, with no modifying circumstances present) or two (2) years, four (4) months and one (1) day, to four (4) years and two (2) months. The minimum of the indeterminate sentence may be taken from the entire range of the next lower penalty of *arresto mayor* (from one [1] month and one [1] day to six [6] months). Hence, the penalty imposed upon the petitioners should be modified.

Considering that this case was filed in 2008, and given the modification of the penalty, there is a need, if applicable, to credit the preventive imprisonment (as well as prison time served and good conduct allowance, if any) of the petitioners in their favor, pursuant to *Inmates of the New Bilibid Prison, Muntinlupa City v. De Lima*.³ Hence, the petitioners' entire period of preventive imprisonment should be deducted from the total term of imprisonment imposed, including time allowances, if any. If petitioners have already fully served their sentence and are qualified, they should immediately be released from imprisonment unless they are being confined for any other lawful cause.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated October 24, 2019 and the Resolution dated November 19, 2021 of the Court of Appeals in CA-G.R. CR No. 01706-MIN are **AFFIRMED** with **MODIFICATION**. Petitioners Alterhope Yamba a.k.a. "Federico Yamba" a.k.a. "Boboy Yamba" and Ferdinand Yano are **GUILTY** beyond reasonable doubt of the crime of Qualified Theft of Coconuts, penalized under Article 310 in relation to Articles 308 (3) and 309 (7) of the Revised Penal Code. Accordingly, they are sentenced to suffer the indeterminate penalty of imprisonment of two (2) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day, of *prision correccional*, as maximum.

³ G.R. No. 212719, June 25, 2019.


The Bureau of Corrections and the Bureau of Jail Management and Penology are **REQUIRED** to **EVALUATE** and **COMPUTE** with reasonable dispatch the time served, as well as the time allowances, if any, due to petitioners and, thereafter, the Director General of the Bureau of Corrections, Muntinlupa City, and the Chief of the Bureau of Jail Management and Penology are **DIRECTED** to **CAUSE** their immediate release from imprisonment in case of full service of sentence, unless they are being confined thereat for any other lawful cause. The Director General of the Bureau of Corrections and the Chief of the Bureau of Jail Management and Penology are **DIRECTED** to make a report of the action taken hereon within ten (10) days from receipt of the Resolution.

Petitioners are **REQUIRED** to submit a soft copy in compact disc, USB or e-mail containing the PDF file of the signed verified petition for review on *certiorari* and its annexes pursuant to A.M. Nos. 10-3-7-SC and 11-9-4-SC within ten (10) days from receipt of the Resolution.

Atty. Carlo C. Borromeo, counsel for petitioners, is required to **SUBMIT** his contact details, *i.e.*, telephone number, cellphone number and/or e-mail address, pursuant to A.M. No. 07-6-5-SC dated July 10, 2007, within ten (10) days from receipt of the Resolution.

SO ORDERED.” *Marquez, J., on official business.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
MIS

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

14
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14

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