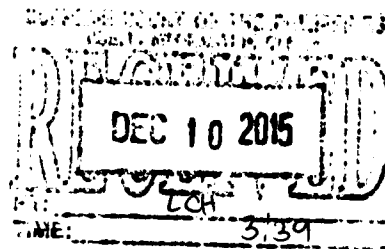




Republic of the Philippines  
**Supreme Court**  
**Manila**

FIRST DIVISION



**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff-appellee,

**G.R. No. 196258**

Present:

- versus -

SERENO, *CJ.*,  
 Chairperson,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PEREZ, and  
 JARDELEZA,\* *JJ.*

**BONIFACIO DANDANON** y  
**ILIGAN a.k.a. "Boning,"**  
 Accused-appellant.

Promulgated:

**SEP 28 2015**

X-----X

**DECISION**

**LEONARDO-DE CASTRO, J.:**

For Our review is the Decision<sup>1</sup> dated December 20, 2010 of the Court of Appeals, Cagayan de Oro City, in CA-G.R. CR-H.C. No. 00611-MIN, affirming with modification the Judgment<sup>2</sup> dated February 28, 2008 of the Regional Trial Court (RTC) of Agusan del Norte and Butuan City, Branch 2, in Criminal Case No. 11737, which found accused-appellant Bonifacio Dandanon y Iligan a.k.a. "Boning" guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code of the Philippines and sentenced him to *reclusion perpetua*.

On May 2, 2006, an Information<sup>3</sup> was filed with the RTC of Agusan del Norte and Butuan City, Branch 2 charging accused-appellant and two other unidentified men with murder allegedly committed thus:

The undersigned accuses BONIFACIO DANDANON Y ILIGAN a.k.a. "Boning," RICHARD DOE and JOHN DOE of the crime of Murder, committed as follows:

\* Additional member per Special Order No. 2188 dated September 16, 2015.

<sup>1</sup> *Rollo*, pp. 2-21; penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Edgardo A. Camello and Leoncia R. Dimagiba concurring.

<sup>2</sup> Records, pp. 527-546; penned by Judge Emmanuel E. Escatron.

<sup>3</sup> Id. at 1.

That at more or less 4:30 P.M. of April 7, 2006 along the National Highway, Dumalagan, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with evident premeditation and with treachery, did then and there willfully, unlawfully and feloniously attack, assault and shot (sic) one Godofredo R. Paceaño, Jr. with the use of an unknown caliber firearm hitting the latter on his head, which caused his instantaneous death.

CONTRARY TO LAW: (Article 248 of the Revised Penal Code as amended by R.A. No. 7659)

During his arraignment on June 21, 2006, accused-appellant pleaded not guilty to the crime charged against him.<sup>4</sup> Trial ensued thereafter.

According to the evidence<sup>5</sup> presented by the prosecution, at around 3:00 in the afternoon on April 7, 2006, accused-appellant and his two companions went inside Carlos Place Restaurant and ordered *batchoy*. They were the only customers at that time. Helen Monterde (Monterde), the helper on-duty, served their orders and sat at a table next to them. Monterde described one customer, whom she later identified as accused-appellant, as about 40 years of age, 5'2" to 5'4" tall, with a big stomach and thin beard, wearing an orange t-shirt and *maong* pants. One of accused-appellant's companions was wearing a white shirt and cargo pants while the other was wearing a white blazer and pants. The three men left upon finishing their meal and proceeded to the waiting shed, about ten meters away from the restaurant. A few minutes later, accused-appellant and the man wearing a white shirt returned to buy cigarettes. In the meantime, Prosecutor Godofredo R. Paceaño, Jr. (Paceaño) and his companion arrived at the restaurant and also ordered *batchoy*. Monterde noticed that accused-appellant and his companion hurriedly left after seeing Paceaño.

Around 4:00 in the afternoon of even date, Paceaño boarded a multicab in front of the GSIS Building along J.C. Aquino Avenue, Butuan City. Paceaño sat at the rightmost corner of the multicab, behind the front passenger's seat. On Paceaño's left sat Daniel Deloso (Deloso), followed by Gretchen Zaldivar (Zaldivar). Accused-appellant boarded the same multicab just a few meters away and sat at the leftmost corner, behind the driver's seat, right across Paceaño, and beside Joanne Ruales (Ruales).

While traversing the highway in Barangay Dumalagan, Butuan City, accused-appellant suddenly pulled out a gun and shot Paceaño twice. Paceaño

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<sup>4</sup> Id. at 52.

<sup>5</sup> As gathered from the testimonies of prosecution witnesses: Gretchen Zaldivar, Joanne Ruales, Helen Monterde, Arturo Quiban, Daniel Deloso, and Aida Paceaño.

sustained multiple gunshot wounds on his head, thereby causing his death.<sup>6</sup> Arturo Quiban (Quiban), the driver, thought that a tire blew up so he stopped the multicab at the roadside. Accused-appellant alighted from the vehicle, warning the other passengers not to make any noise, and then boarded a motorcycle that was trailing the multicab.

Quiban immediately drove the multicab to the Buenavista Police Station to report the incident, with the other passengers alighting at their respective destinations along the way. Paceaño's wife and relatives were notified of his death.

Task Force Paceaño, composed of members of the Philippine National Police (PNP), Criminal Investigation and Detection Group (CIDG), the National Bureau of Investigation (NBI), and other law enforcement agencies, was created to investigate, gather evidence, arrest, and file the necessary charges against the suspect(s). Two witnesses, Zaldivar and Ruales, were able to identify accused-appellant from a photo montage as the gunman. Consequently, accused-appellant was arrested and charged with murder.

Evidence submitted by the defense presented a different version of events. Accused-appellant himself denied any involvement in the crime, proffering an alibi.

At around 2:00 in the afternoon on April 7, 2006, accused-appellant, a member of the Manobo tribe and a civilian military volunteer (CAFGU), attended a tribal meeting held at the residence of his relative, Libano Ilagan (Ilagan) a.k.a. Datu Kaligtasan, in Sibagat, Agusan del Sur. The meeting was held to discuss the proposal of Soriano Banana Plantation to use Ilagan's ancestral land as its banana plantation site. When the meeting ended at around 4:00 in the afternoon, accused-appellant and Ilagan left the house to speak with several persons. At around 6:00 in the evening, accused-appellant and Ilagan returned to the latter's residence where accused-appellant stayed until April 12, 2006.

The defense called to the witness stand Ilagan, Police Inspector (P/Insp.) Celso Acero, Jr. (Acero), Nenita Pagios (Pagios), Atty. Gil Cembrano (Cembrano), and Sergeant (Sgt.) Antonio Adora (Adora), to corroborate accused-appellant's alibi. As was recounted in their collective testimonies, accused-appellant arrived in Sibagat, Agusan del Sur on April 6, 2006 and stayed overnight at Ilagan's house. Around 10:00 in the morning to 12:00 noon of the next day, April 7, 2006, Atty. Cembrano, a certain Siegfried Cembrano, and Ilagan discussed the plan for the banana plantation with the Community Environment and Natural Resources Officer in Bayugan, Agusan del Sur. At around 2:00 in the afternoon, Atty. Cembrano

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<sup>6</sup> Records, p. 28. Certificate of Death.

dropped off Ilagan at the latter's residence where he saw accused-appellant who just woke up from an afternoon nap. A tribal meeting was held at Ilagan's house starting at about 2:00 and ending at 3:30 in the afternoon. During the meeting, accused-appellant went out and bought a 3-in-1 coffee sachet and bread from an adjacent *sari-sari* store owned by Pagios. At around 3:20 that same afternoon, P/Insp. Acero passed by Ilagan's house where he saw accused-appellant and Ilagan talking to each other. Accused-appellant and Ilagan left Ilagan's house and from 4:00 to 5:00 in the afternoon, looked for and spoke with Mario Gomez, Emelio Cayawan, and Mario Mahayhay about the hiring of trucks for the transportation of logs to Sibagat. On their way home at 5:30 in the afternoon, accused-appellant and Ilagan met and spoke with Sgt. Adora for a few minutes. Accused-appellant and Ilagan arrived at the latter's house at 6:00 in the evening and accused-appellant stayed at said house for the night.

On February 28, 2008, the RTC promulgated a Decision finding accused-appellant guilty of the crime charged and sentencing him as follows:

WHEREFORE, in the light of the foregoing, the Court finds accused BONIFACIO DANDANON Y ILIGAN, GUILTY BEYOND REASONABLE DOUBT of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, and hereby sentences him to an imprisonment of Reclusion Perpetua and to pay the heirs of the victim:

- a) Loss of Earning Capacity in the sum of ₱3,200,319.40;
- b) Moral damages in the sum of ₱50,000.00;
- c) Exemplary damages in the sum of ₱25,000; and
- d) Cost.

Accused Bonifacio Dandanon y Iligan in the service of his sentence shall be credited in his favor the period of his preventive imprisonment that he has already undergone under Article 29 of the Revised Penal Code and R.A. No. 6127 and shall serve his sentence at Davao Prison and Penal Farm, Panabo City, Philippines.<sup>7</sup>

Accused-appellant appealed the foregoing RTC judgment before the Court of Appeals, based on the following assignment of errors:

I. THE LOWER COURT ERRED IN FINDING THE TESTIMONIES OF THE ALLEGED EYEWITNESSES CREDIBLE BEYOND REASONABLE DOUBT.

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<sup>7</sup>

Id. at 546.

II. THE LOWER COURT ERRED IN DISMISSING THE ACCUSED (sic) IRON CLAD DEFENSE OF ALIBI.

III. THE LOWER COURT ERRED IN NOT APPRECIATING THE IRREGULARITIES IN THE PRIOR INVESTIGATION AND THE OUT OF COURT IDENTIFICATION PROCEEDINGS SMACKED OF THE ELEMENTS OF A SET UP THAT LED TO THE PROSECUTION AND CONVICTION OF THE ACCUSED.<sup>8</sup>

In its Decision dated December 20, 2010, the Court of Appeals gave scant consideration to accused-appellant's arguments on the alleged irregularities in the police investigation and out-of-court identification by witnesses of accused-appellant, and the inconsistencies in the sworn statements of the prosecution witnesses. The Court of Appeals ruled that accused-appellant failed to prove ill motive on the part of the prosecution witnesses in identifying him as the one who killed Paceño; and that it was physically impossible for him to be at the scene of the crime at the time it was committed. The appellate court also found no merit in accused-appellant's contention that his non-flight signified his innocence. Concluding that accused-appellant's identity and involvement in the crime were established beyond reasonable doubt by the prosecution, the Court of Appeals decreed:

**WHEREFORE**, premises considered, this appeal is **DISMISSED**. The assailed Decision of the Regional Trial Court, Branch 2, Butuan City, in Criminal Case No. 11737 is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant is found guilty beyond reasonable doubt of the crime of Murder. He is sentenced to imprisonment of *reclusion perpetua*. Accused-appellant is further ordered to pay the heirs of the victim the following sums: ₱50,000.00, as moral damages; ₱30,000.00, as exemplary damages; and ₱50,000.00 civil indemnity.<sup>9</sup>

Hence, the instant appeal.

In a Resolution<sup>10</sup> dated June 13, 2011, this Court directed both parties to file their supplemental pleadings. The OSG filed a Manifestation<sup>11</sup> stating that it had no intention of filing a supplemental pleading as it had already extensively discussed all the issues in its Brief for the Appellee.<sup>12</sup> On November 8, 2011, accused-appellant filed his Supplemental Brief<sup>13</sup> basically containing the same arguments found in his Accused-Appellant's Brief<sup>14</sup> and Memorandum<sup>15</sup> filed with the RTC.

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<sup>8</sup> CA *rollo*, p. 11.

<sup>9</sup> *Rollo*, p. 20.

<sup>10</sup> Id. at 26-27.

<sup>11</sup> Id. at 32-33.

<sup>12</sup> CA *rollo*, pp. 112-126.

<sup>13</sup> *Rollo*, pp. 35-54.

<sup>14</sup> CA *rollo*, pp. 10-23.

<sup>15</sup> Records, pp. 448-459.

Accused-appellant pointed out that only two out of the five prosecution witnesses, Zaldivar and Ruales, were able to testify and identify accused-appellant as Paceño's killer. Yet, the RTC included Quiban who, just like Deloso, admitted that he could not recall the killer's face. Monterde had no personal knowledge of the shooting since she was not on the multicab when the shooting happened.

Accused-appellant likewise questioned his out-of-court identification by Zaldivar and Ruales. *First*, Zaldivar and Ruales did not have sufficient time to familiarize themselves with the faces of their co-passengers, especially that of accused-appellant who was a stranger to them. *Second*, Zaldivar and Ruales were unmindful of the other passengers as Zaldivar was looking outside the multicab, lost in thought, while Ruales was taking a nap and was only roused by the shooting incident. *Third*, the descriptions of the killer given by Zaldivar and Ruales were inconsistent, proving that they were unsure of the killer's physical appearance. Accused-appellant alleged that while he was under investigation at the NBI office, Atty. Cembrano temporarily went out of the room to answer the call of nature when he passed by several witnesses looking at accused-appellant through a one-way mirror. Atty. Cembrano overheard two of the witnesses talking: one was having doubts as to accused-appellant's identity while the other one was convincing the former that accused-appellant was the killer. Accused-appellant deduced that the said witnesses who Atty. Cembrano saw were Zaldivar and Ruales, and one of them was unsure of the killer's identity and was merely influenced by her co-witness. In addition, allowing the witnesses to simultaneously view accused-appellant through the one-way mirror gave the witnesses the opportunity to persuade/influence one another to point to accused-appellant as the killer. *Fourth*, the time between the commission of the crime and the identification of accused-appellant as the killer was suspiciously brief. Accused-appellant immediately became the prime suspect even before the witnesses could identify him from a photo montage and despite lack of any motive on his part to kill Paceño. *And fifth*, Zaldivar and Ruales were "coached or unduly guided by somebody to commit a mistake during the identification proceedings," revealing a plot to pin the crime on accused-appellant.

Accused-appellant maintained that he was in Sibagat, Agusan del Sur when Paceño was killed in Butuan City, a fact corroborated by the defense witnesses. Accused-appellant further averred that a murderer would have fled or gone into hiding, but he chose to clear his name and face prosecution, proving that he is innocent of the crime being imputed against him.

We are not persuaded.

Accused-appellant essentially challenges the weight and credence accorded by the RTC, and later affirmed by the Court of Appeals, to the evidence of the prosecution, especially the testimonies of the witnesses who identified him as Paceño's killer.

In *People v. Lolos*,<sup>16</sup> the Court pronounced that:

Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. As a general rule, on the question whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth.

Both the trial and appellate courts were convinced that the evidence for the prosecution established accused-appellant's guilt beyond reasonable doubt. We see no cogent reason to disturb such finding.

The crime of murder is described and penalized under Article 248 of the Revised Penal Code thus:

Art. 248. *Murder*. – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With **treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity[.] (Emphasis supplied.)

The essential elements of murder are the following: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) that the killing is not parricide or infanticide.<sup>17</sup> All elements are extant herein.

That Paceño died after being shot twice on board a multicab on April 7, 2006 is undisputed. His Certificate of Death<sup>18</sup> is part of the records of the case.

<sup>16</sup> 641 Phil. 624, 632-633 (2010).

<sup>17</sup> *People v. Obosa*, 429 Phil. 522, 537 (2002).

<sup>18</sup> Records, p. 18.

Both Zaldivar and Ruales positively identified accused-appellant as Paceño's killer. Relevant portions of Zaldivar's testimony are reproduced below:

Q: And you made mentioned (sic) that after Pros. Paceño stepped on board a multicab, another passenger hurried in going on board also you made mention of that?

A: Yes, sir.

Q: And when he managed to on board (sic) that vehicle, where did he position himself inside?

A: He sat in front of Fiscal Paceño.

x x x x

Q: When your vehicle reached Dumalagan because you said it was going to Nasipit, what happened if any?

A: [Accused-appellant] shot Pros. Paceño.

Q: How many times?

A: Two (2) times.

x x x x

Q: What was the position of [accused-appellant] now when you said he changed seat in relation to Pros. Paceño?

A: [Accused-appellant] seated in front of Pros. Paceño.

Q: How about you, where were you positioned inside the multicab?

A: I was also seated in front of [accused-appellant], sir.

Q: Now, if this person whom you said that (sic) Pros. Paceño two times in the afternoon of April 7, 2006 while the vehicle you were on board on was in Dumalagan. If this person is present in the courtroom today, would you be able to point him?

A: Yes, sir.

Q: Please point at him?

A: (the witness did so).

Witness was pointing to a person seated on the first bench o[f] the courtroom wearing a yellow t-shirt and the person has a towel and when as to (sic) his name, he answered that he is Bonifacio Dandanon.

Q: Are you sure that the man you pointed out is the one who shot Pros. Paceño two times?

A: Yes, sir.<sup>19</sup>

As for Ruales, she testified:

<sup>19</sup> TSN, October 26, 2006, pp. 5-6.



Q: When this public utility vehicle was in front of the GSIS building, where was your position inside that vehicle as passenger?

A: Left side of the vehicle.

Q: How about the man you identified as Fiscal Paceaño, where did he position himself as passenger inside that same vehicle?

A: Also on the right side, sir.

Q: How about the other person whom you said came on board the vehicle just a few meters from where Fiscal Paceaño came on board?

A: He was seated beside me on the left side of the vehicle, sir.

Q: What else did you notice of this passenger whom you said just seated beside you?

A: I observed him to be feeling uneasy and he was also always coughing that time.

Q: What happened when this public utility vehicle reached Dumalagan, Butuan City?

A: The person who sat beside me shot Fiscal Paceaño.

Q: What part of the body of Fiscal Paceaño did that person shoot?

A: He was shot on his face, sir.

Q: How many times?

A: Twice.

Q: If this person whom you said shot Fiscal Paceaño twice on the head while inside a moving public utility vehicle is in court today, can you point at him?

A: Yes, sir.

Q: Please do.

A: (Make it of record that the witness is pointing to a person seated on the second row of the spectator's bench when asked of his name, answered that he is Bonifacio Dandanon).

Q: If you can remember, Miss Witness, can you tell the Honorable Court the color of clothes of the person who shot Fiscal Paceaño?

A: Yes, he was wearing orange T-shirt at that time.<sup>20</sup>

As to the admissibility of the out-of-court identification of accused-appellant made by Zaldivar and Ruales, we apply the totality-of-circumstances test, discussed in *People v. Rivera*<sup>21</sup> as follows:

We explained the procedure for out-of-court identification and the test to determine the admissibility of such identification in *People v. Teehankee, Jr.*, viz.:

<sup>20</sup> TSN, October 30, 2006, pp. 8-9.

<sup>21</sup> 458 Phil. 856, 875-876 (2003).

Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face to face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose. . . In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, *viz.*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. (Citation omitted.)

Based on the totality-of-circumstances test, the out-of-court identification of accused-appellant by Zaldivar and Ruales was properly admitted and considered by the trial court as evidence. The shooting incident happened at 4:00 in the afternoon of April 7, 2006 when it would have been still bright enough for Zaldivar and Ruales to clearly see their surroundings. Zaldivar was sitting across accused-appellant while Ruales was sitting right beside accused-appellant, and within the close confines of the multicab, both witnesses had the opportunity to have a good look at accused-appellant's face. The minor inconsistencies in the description of the killer, *i.e.*, his complexion, physique, and other physical attributes, given by Zaldivar and Ruales bolster, rather than destroy, said witnesses' credibility, and further negate accused-appellant's claim that the witnesses were rehearsed, coached, or guided. Moreover, accused-appellant failed to present credible evidence that the out-of-court identification process was manipulated by the police or that the police improperly suggested to the witnesses that accused-appellant was the person they suspected responsible for Paceño's killing.

Even granting for the sake of argument that there were irregularities in the out-of-court identification of accused-appellant by Zaldivar and Ruales, these were rendered moot by the subsequent identification of accused-appellant by the same witnesses in open court. Relevant herein is our ruling in *People v. Rivera*<sup>22</sup>:

Even assuming *arguendo* that the appellant Alfonso Rivera's out-of-court identification was tainted with irregularity, his subsequent identification in court cured any flaw that may have attended it. Without hesitation, the two prosecution witnesses, Renato Losaria and Juanito Baylon identified the appellant as one of the assailants. In *People v. Timon*, the accused were identified through a show-up. The accused assailed the process of identification because no other suspect was

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<sup>22</sup>

Id. at 876-877.

presented in a police line-up. We ruled that a police line-up is not essential in identification and upheld the identification of the accused through a show-up. We also held that even assuming *arguendo* that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the “inadmissibility of a police line-up identification x x x should not necessarily foreclose the admissibility of an independent in-court identification.” (Citations omitted.)

Still, accused-appellant attempts to capitalize on an error purportedly committed by the RTC in its Judgment dated February 28, 2008 in including Quiban, the driver, as among the witnesses who identified accused-appellant as Paceyño’s killer. The RTC stated in its Judgment that:

Prosecution witnesses Joanne Ruales, Gretchen Zaldivar and Arturo Quiban positively identified herein accused as the assailant of the victim, Prosecutor Paceyño, pertinent questions and answers of said witnesses Joanne Ruales and Gretchen Zaldivar during the trial hereunder quoted[.]<sup>23</sup>

Accused-appellant asserts that Quiban was not able to positively identify him as Quiban could not remember the face of Paceyño’s killer.

That the RTC considered Quiban as a material witness in the identification of accused-appellant as Paceyño’s killer was not without basis. As Quiban narrated during his direct examination:

Q: My question awhile ago, whether there were some other passengers other than Fiscal Paceyño who also step[ped] on board your vehicle in front of the GSIS?

A: Yes, sir.

Q: Can you describe this person, can you perhaps describe also his clothing, Mr. Witness?

A: He was wearing an orange T-shirt and *maong* pants, medium to large built. I cannot remember his face, only his built.

x x x x

Q: You said that you heard two gun shoots (sic) and you said you saw Fiscal Paceyño, one of your passengers on the afternoon of that day fell down, how about the other passenger whom you said [was] wearing orange T-shirt and wearing *maong* pants, what can you say about it since he was also one of your passengers just as Fiscal Paceyño was your passenger?

A: I saw the person wearing orange T-shirt and *maong* pants step down from my vehicle and he was the only one who wore orange T-shirt and *maong* pants.

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<sup>23</sup> Records, p. 539.

- Q: Where did he go after the shooting, the two gun shoots (sic) that you heard?
- A: He step[ped] down in Dumalagan and heeded (sic) for Butuan City.<sup>24</sup>

Quiban's testimony corroborated material portions in Ruales's testimony, particularly, that a person wearing an orange shirt and *maong* pants boarded the multicab somewhere in front of the GSIS Building, that such person was still in the multicab at the time of the shooting, and that said person immediately alighted from the multicab after one of the passengers was shot. We bear in mind that Ruales testified that accused-appellant was wearing an orange shirt and *maong* pants when he shot Paceaño inside the multicab on April 7, 2006. Assuming that the RTC did err in including Quiban among the witnesses who were able to identify accused-appellant as Paceaño's killer, it would be too trivial to warrant a reversal of the judgment of conviction rendered by both the RTC and the Court of Appeals against accused-appellant. Even if we were to disregard Quiban's testimony, there would still remain the testimonies of Zaldivar and Ruales which categorically identified accused-appellant as Paceaño's killer and were quoted by the RTC in its Decision.

Monterde's testimony is also relevant as corroborating evidence. Monterde attested before the trial court that on April 7, 2006 around 3:00 in the afternoon, accused-appellant, wearing an orange t-shirt and black pants, and his two companions ordered *batchoy* and later purchased cigarettes at the restaurant in Butuan City where she worked.<sup>25</sup> These matters are definitely within Monterde's personal knowledge, and substantiate the testimonies of other prosecution witnesses that accused-appellant was in Butuan City in the afternoon of April 7, 2006.

There was *alevosia* or treachery in accused-appellant's killing of Paceaño. For treachery to qualify the act of killing to murder, two elements must concur: (1) the culprit employed means, methods, and forms of execution which tended directly and specially to insure the offender's safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity was given the latter to do so; and (2) that the offender consciously adopted the particular means, method, or form of attack employed by him. The essence of treachery is a swift and unexpected attack on the unarmed victim without the slightest provocation on the part of the victim. Treachery is never presumed but must be proven with moral certainty like the offense itself.<sup>26</sup> In the instant case, accused-appellant's treachery is evident in the following circumstances: (a) he armed himself with a gun; (b) he consciously boarded the same multicab with Paceaño and sat across the latter; (c) Paceaño was unarmed and unaware of any impending

<sup>24</sup> TSN, December 8, 2006, pp. 7, 10.

<sup>25</sup> TSN, November 17, 2006, pp. 6-7.

<sup>26</sup> *People v. Mondijar*, 440 Phil. 889, 900 (2002).

attack against him; (d) without any provocation, accused-appellant suddenly pulled out his gun, and aimed and shot Paceaño twice in the head, leaving the latter with no means to defend himself, much less retaliate. The qualifying circumstance of treachery was properly alleged in the Information.

Paceaño's killing does not constitute parricide<sup>27</sup> or infanticide.<sup>28</sup>

Since the evidence for the prosecution established all the essential elements of murder, we affirm the conviction of accused-appellant for said crime.

Accused-appellant's alibi that he was in Sibagat, Agusan del Sur, when Paceaño was killed in Butuan City does not warrant his acquittal. For alibi to prosper, it must be proven that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the *locus criminis*.<sup>29</sup>

This Court takes judicial notice<sup>30</sup> that the geographical distance between Sibagat, Agusan del Sur and Butuan City is just 37 kilometers, which could be covered by transportation in approximately 37 minutes.<sup>31</sup> It is worthy to note that according to the defense's own account, at the time Paceaño was shot in Butuan City around 4:30 in the afternoon of April 7, 2006, accused-appellant was allegedly with a relative, Ilagan, going around from 4:00 to 5:30 in the afternoon looking for three men they meant to talk to regarding the hiring of trucks for transportation of logs. It would not have been impossible for accused-appellant to have traveled from Sibagat to Butuan City and back within said time period. Ilagan's testimony that accused-appellant was with him during the entire time could not be accorded much weight and credence being accused-appellant's relative, and in the face of the unwavering testimonies given by impartial prosecution witnesses that accused-appellant was in Butuan City.<sup>32</sup>

We stress once more that the defense of alibi is a negative defense which cannot be accorded evidentiary weight in the face of positive assertions by prosecution witnesses. This is especially true in the present case since accused-appellant failed to establish ill motive on the part of the

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<sup>27</sup> Art. 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death. (Revised Penal Code.)

<sup>28</sup> Art. 255. *Infanticide*. - The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age. (Revised Penal Code.)

<sup>29</sup> *People v. Sara*, 463 Phil. 94, 111 (2003); *Velasco v. People*, 518 Phil. 780, 794 (2006).

<sup>30</sup> *People v. Castillo*, 339 Phil. 230 (1997); *People v. Babera*, 388 Phil. 44 (2000); *People v. Limio*, 473 Phil. 659 (2004).

<sup>31</sup> <http://www.distancesfrom.com/ph/distance-from-SIBAGAT-to-Butuan-Agusan-del-Sur/DistanceHistory/2194267.aspx>, last visited September 24, 2015.

<sup>32</sup> See *People v. Galvez*, 407 Phil. 541 (2001); *People v. Rubares*, 422 Phil. 550 (2001); *People v. Marquez*, 430 Phil. 382 (2002).

prosecution witnesses to testify against him. We declared in *People v. Parreno*<sup>33</sup> that “[t]he positive identification of the accused as the perpetrator of the crime, when categorical, consistent, and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.”

Lastly, we are not persuaded by accused-appellant’s argument that he is innocent because he chose to face prosecution and clear his name rather than go into hiding. Unlike flight of an accused, which is competent evidence against him as having a tendency to establish his guilt, non-flight is simply inaction, which may be due to several factors. Hence, it may not be positively construed as an indication of innocence.<sup>34</sup> In *People v. Diaz*,<sup>35</sup> we explained:

As we have held in *People vs. Omar*, non-flight may not be construed as an indication of innocence. There is no law or dictum holding that non-flight of an accused is conclusive proof of innocence. In the more recent case of *People vs. Delmo*, the appellants therein claimed that none of them fled despite opportunities to do so which should be credited to them as an indication of their innocence. To this contention we held that “[w]hile it is true that we have ruled that flight is evidence of guilt, there is no law or dictum holding that staying put is proof of innocence, for the Court is not blind to the cunning ways of a wolf which, after a kill, may feign innocence and choose not to flee.” (Citations omitted.)

Being guilty beyond reasonable doubt of the murder of Paceaño, qualified by treachery, without any mitigating or aggravating circumstance, accused-appellant was correctly sentenced to *reclusion perpetua*.

The RTC ordered accused-appellant to pay Paceaño’s heirs an award for loss of earning capacity. Such an award is computed in accordance with the following formula:

$$\begin{array}{l} \text{Net} \\ \text{Earning} \\ \text{Capacity} \end{array} = \begin{array}{l} \text{remaining life expectancy} \\ [2/3 (80 - \text{age at death})] \end{array} \times \begin{array}{l} \text{Gross Annual} \\ \text{Income (GAI)} \end{array} - \begin{array}{l} \text{Living Expenses} \\ (50\% \text{ of GAI}) \end{array} \text{ } ^{36}$$

The RTC simply fixed the living expenses for Paceaño’s heirs at ₱180,000.00, but we re-compute strictly using the foregoing formula:

$$\begin{aligned} \text{Net earning capacity} &= [2/3 (80-55)] \times (\text{₱}372,096.00) - [\text{₱}372,096.00 \times 50\%] \\ &= [2/3(25)] \times (\text{₱}372,096.00) - (\text{₱}186,048.00) \\ &= 16.67 \times \text{₱}186,048.00 \\ &= \text{₱}3,101,420.16 \end{aligned}$$

<sup>33</sup> 477 Phil. 694, 712 (2004).

<sup>34</sup> *People v. Almacin*, 363 Phil. 18, 31 (1999).

<sup>35</sup> 443 Phil. 67, 89-90 (2003).

<sup>36</sup> *People v. Sumalinog, Jr.*, 466 Phil. 637, 659 (2004).


Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of murder or homicide;<sup>37</sup> while moral damages is awarded for the mental anguish suffered by the heirs of the deceased.<sup>38</sup> Following the latest jurisprudence,<sup>39</sup> we increase the amounts awarded for civil indemnity and moral damages from ₱50,000.00 to ₱75,000.00, while sustaining the award of exemplary damages in the amount of ₱30,000.00.

**WHEREFORE**, premises considered, the Decision dated December 20, 2010 of the Court of Appeals, Cagayan de Oro City, in CA-G.R. CR-H.C. No. 00611-MIN is **AFFIRMED with MODIFICATIONS**. Accused-appellant Bonifacio Dandanon y Iligan a.k.a. “Boning” is found **GUILTY** beyond reasonable doubt of the crime of murder and is **SENTENCED** to suffer the penalty of *reclusion perpetua*. He is further **ORDERED** to pay the heirs of Godofredo R. Paceño, Jr. loss of earning capacity in the amount of ₱3,101,420.16; civil indemnity in the amount of ₱75,000.00; moral damages in the amount of ₱75,000.00; and exemplary damages in the amount of ₱30,000.00.

**SO ORDERED.**

  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice

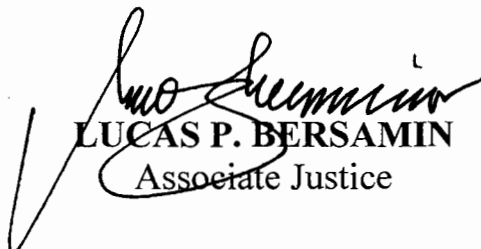
WE CONCUR:

  
MARIA LOURDES P. A. SERENO  
Chief Justice  
Chairperson

<sup>37</sup> *People v. Abatayo*, 477 Phil. 668, 692 (2004).

<sup>38</sup> CIVIL CODE OF THE PHILIPPINES, Article 2206(3).

<sup>39</sup> *People v. Las Piñas*, G.R. No. 191723, July 23, 2014, 730 SCRA 571, 602.



**LUCAS P. BERSAMIN**  
Associate Justice



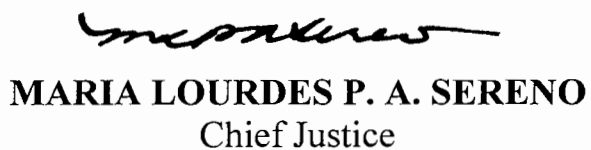
**JOSE PORTUGAL PEREZ**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice