

FIRST DIVISION

[G.R. No. 196258, September 28, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONIFACIO DANDANON Y ILIGAN A.K.A. "BONING," ACCUSED-
APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

For Our review is the Decision^[1] 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^[2] 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^[3] 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:

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. Paceño, 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.^[4] Trial ensued thereafter.

According to the evidence^[5] 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. Paceño, Jr. (Paceño) and his companion arrived at the restaurant and also ordered *batchoy*. Monterde noticed that accused-appellant and his companion hurriedly left after seeing Paceño.

Around 4:00 in the afternoon of even date, Paceño boarded a multicab in front of the GSIS Building along J.C. Aquino Avenue, Butuan City. Paceño sat at the rightmost corner of the multicab, behind the front passenger's seat. On Paceño'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 Paceño, and beside Joanne Ruales (Ruales).

While traversing the highway in Barangay Dumalagan, Butuan City, accused-appellant suddenly pulled out a gun and shot Paceño twice. Paceño sustained multiple gunshot wounds on his head, thereby causing his death.^[6] 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. Paceño's wife and relatives were notified of his death.

Task Force Paceño, 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 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 P3,200,319.40;
- b) Moral damages in the sum of P50,000.00;
- c) Exemplary damages in the sum of P25,000; 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.^[7]

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.
- 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.^[8]

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: P50,000.00, as moral damages; P30,000.00, as exemplary damages; and P50,000.00 civil indemnity.^[9]

Hence, the instant appeal.

In a Resolution^[10] dated June 13, 2011, this Court directed both parties to file their supplemental pleadings. The OSG filed a Manifestation^[11] 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.^[12] On November 8, 2011, accused-appellant filed his Supplemental Brief^[13] basically containing the same arguments found in his Accused-Appellant's Brief^[14] and Memorandum^[15] filed with the RTC.

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*,^[16] 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: