



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 191722

Present:

- versus -

**GERRY SABANGAN AND NOLI
BORNASAL,**
Accused,

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

GERRY SABANGAN,
Accused-Appellant.

Promulgated:

DEC 11 2013

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DECISION

LEONARDO-DE CASTRO, J.:

On appeal is the Decision¹ dated November 20, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00329-MIN, which affirmed with modification the Decision² dated November 25, 2004 of the Regional Trial Court (RTC), Branch 16, City of Davao, in Criminal Case No. 46,888-01. While the appellate court sustained the conviction of accused-appellant Gerry Sabangan (Sabangan) for the murder of Barangay Captain Abe Felonia (Felonia), it acquitted the other accused, Noli Bornasal (Bornasal), of the same crime.

When the Information was filed before the RTC on February 21, 2000, only Sabangan was identified by the police and Bornasal, who was still at-large, was referred to therein as "John Doe."

During his arraignment on April 14, 2000, Sabangan pleaded not guilty to the crime charged.³

¹ *Rollo*, pp. 5-29; penned by Associate Justice Dante Q. Bueser with Associate Justices Romulo V. Borja and Elihu A. Ybañez, concurring.

² *CA rollo*, pp. 21-33; penned by Presiding Judge Emmanuel C. Carpio.

³ *Records*, p. 30.

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On June 10, 2002, the RTC, acting upon the motion of the prosecution, issued an Order⁴ for the inclusion of Bornasal's name in the Information and the issuance of a warrant for his arrest. Bornasal was arrested on June 13, 2002,⁵ and arraigned on July 17, 2002, during which, he likewise pleaded not guilty to the crime charged.⁶

No stipulation of facts or plea bargaining agreement was reached by the parties at the pre-trial conference held on August 28, 2002.⁷ However, before the presentation of evidence before the RTC, the defense expressed its willingness to stipulate the fact that Felonia was shot to death on December 27, 1999.⁸

The prosecution presented the testimonies of Eden Allado (Allado)⁹ and Flora Navales (Navales),¹⁰ who actually saw Sabangan shoot Felonia to death; Marlon Cordero (Cordero),¹¹ who saw Sabangan and Bornasal running away from the vicinity immediately after the shooting incident; Roberto T. Badian (Badian),¹² the Chief of Police of Kidapawan City in 1999, who investigated the shooting of Felonia; and Helen Felonia Galladora (Galladora),¹³ Felonia's daughter, who testified on the damages suffered by Felonia's heirs.

The prosecution likewise presented documentary evidence which consisted of Galladora's Sworn Statement dated February 11, 2000;¹⁴ Police Chief Badian's Affidavit dated February 11, 2000;¹⁵ Allado's Sworn Statements dated February 7 and 22, 2000;¹⁶ Allado's sketch of the crime scene;¹⁷ Navales's Sworn Statements dated February 9 and 18, 2000;¹⁸ Cordero's Sworn Statements dated February 4 and 22, 2000, and another one dated June 7, 2002;¹⁹ Cordero's sketch of the vicinity of the crime scene;²⁰ the Official Receipt for the funeral services for Felonia;²¹ receipts from a hardware and grocery store;²² and two (2) pieces of paper containing handwritten additional funeral expenses.²³

⁴ Id. at 197.

⁵ Id. at 198-200.

⁶ Id. at 203-204.

⁷ Id. at 207-208.

⁸ TSN, January 27, 2003, p. 3.

⁹ TSN, January 29, 2003.

¹⁰ Id.

¹¹ TSN, January 30, 2003.

¹² TSN, January 28, 2003.

¹³ TSN, January 27 and 31, 2003.

¹⁴ Records, pp. 256-257; Exhibit A.

¹⁵ Id. at 258; Exhibit B.

¹⁶ Id. at 259-261; Exhibit C.

¹⁷ Id. at 262; Exhibit D.

¹⁸ Id. at 263-265; Exhibit E.

¹⁹ Id. at 266-269; Exhibit F.

²⁰ Id. at 270; Exhibit G.

²¹ Id. at 271; Exhibit H.

²² Id. at 272-273; Exhibits I and J.

²³ Id. at 274-275; Exhibits K and L.

The RTC summarized the prosecution's evidence as follows:

Private complainant **Helen Felonia Galladora**, on January 27, 2003, testified as follows: She is one of the daughters of ABE FELONIA who was gunned down on December 27, 1999 at about 1:30 p.m. at Mega Market, Kidapawan City; her father was the barangay captain of Duroloman, Arakan, Cotabato for more than twenty years. She was at Arakan on December 27, 1999 when she learned about the death of her father from a certain Efren Balecer. She instructed her husband, brother and sisters to verify the news. She later came to know about the identity of the assailant from the sworn statements of Flora Navales, Eden Allado, Major Badia and Marlon Cordero. The death of her father shocked the family specially her mother whose blood pressure worsened for which she prays for damages of two million pesos. As a consequence of the death of their father, they spent ₱68,000.00 for the coffin. She identified her sworn statement as Exhibit "[A]." (TSN 1/27/2003, pages 2-11).

On cross-examination, she admits having stated in her affidavits that: Right after the shooting of my father I do not know the name of the suspect but later on because I know the name of the suspect based on the Sworn Statements given by the witnesses.

Roberto Badian, the Chief of Police of Kidapawan in 1999 says that he conducted an investigation right after the fatal shooting of Duroloman Barangay Captain Abe Felonia and came up with the information from bystanders and witnesses that: the perpetrators ran towards the lower portion of the public market where the clutch bag of victim was recovered; Gerry Sabangan who has a pending robbery case in Kidapawan but out on bail, was one of the suspects. He identified the witnesses to the crime as Flora Navales, Eden Allado, Marlon. He learned from Navales, Allado and Marlon that they can directly identify the accused if seen again. Accused after being spotted in Antipaz was invited to the police safehouse where the three witnesses (Navales, Allado and Marlon) positively identified and pointed to accused as [the] triggerman who shot Abe Felonia. Accused was arrested and locked up in jail and a case for murder against accused was initiated by the police. He identified his Affidavit as Exhibit "[B]". He identified accused in open court as the same person who was pointed to by the witnesses. (TSN, Jan. 28, 2003, pages 17-25).

On cross-examination, he disclosed that the interview in the course of investigation is different from the taking of sworn statements of witnesses: Flora Navales and Edith Allado's sworn statements were taken on February 7, 2000 while the supplemental sworn statements were taken on February 18, 2000; Marlon's sworn statement was taken on February 3, 2000. (TSN, Jan. 28, 2003, page 29).

Eden Allado says that she was inside the store of Flora Navales at Mega Market, Kidapawan early afternoon about 1:30 p.m. on December 27, 1999 waiting for her husband Loreto Allado. Inside the store were Flora Navales, Abe Felonia, the storekeeper and another person. She knows Abe Felonia as a long time barangay captain and even greeted him. While exchanging pleasantries side by side together with Felonia, she noticed a "customer" went inside the store. Then she heard Flora shouting "ATE EDEN" apparently in reaction to what Flora saw of the "customer"

as positioned at the back of Felonia and pulling a gun with which he used to shoot three times at the back of the head of Felonia.

Allado saw Felonia fell down right beside her and she shouted for help. The “customer” grabbed the bag of Felonia. She tried to grapple with the bag but she was too small to give a match to the “customer” who even pointed the gun at her as he ran away towards Serquina Store. She describes the “customer” as wearing a gray brown jacket. She recognized the “customer” who was later identified as accused Gerry Sabangan because when she tried to pull the bag from him, she saw the face and it registered in her mind. On February 7, 2000, she was shown several pictures, one of which she recognized as the same person who shot Abe Felonia. She finally personally saw accused Gerry Sabangan for the second time on February 18, 2000 near a police outpost in Kidapawan. She identified accused Gerry Sabangan in open court. She identified her affidavits as Exhibits “[C]” and “[C-1]”.

On cross-examination, she disclosed that Abe Felonia is a well-known personality with good reputation and a long time barangay captain in Barangay Duroluman, Arakan, Cotabato. She describes Navales store as selling school supplies and is located in front the jeep terminal for Arakan. She estimates the size of the store as half of the courtroom or 4x6 meters with 4 meters open entrance, more or less. She entered the store between 1:00 to 1:30 p.m. to wait for her husband; Flora Navales who was doing something [waved] at her. Abe Felonia came in to buy commodities and they had brief conversation. She thought accused Gerry Sabangan was a customer. After the shooting took place she shouted for help as Abe Felonia sprawled to the ground bathed with blood. Bystanders brought Felonia to the Kidapawan Hospital where he expired. She followed at the hospital pleading to the doctors to save the life of Felonia. Later she went home to change her clothes smeared with blood from Felonia. She was rattled, nervous with the incident that she did not leave their house.

Police authorities tried to interview her a day or two after the shooting incident but she pleaded for time to recover from the traumatic and tragic event. She could not sleep and had to see a doctor. She was afraid to give her statement for fear that if she did, the killer will return to kill her. However with conscience bothering her, she finally decided to come out and declare what she saw as an eyewitness, by executing sworn statements about the December 27, 1999 shooting incident. (TSN, Jan. 29, 2003, pages 55-58 and 62).

She further disclosed that she was inside a tinted jeep when she was asked by the police if she recognized accused Gerry Sabangan and she said she recognized accused Gerry Sabangan because she saw him shot Felonia. (TSN, Jan. 29, 2003, page 60).

Flora Navales says she owns a school supplies store at Metro Mega Market, Kidapawan City. While tending the store at about 1:30 p.m. on December 27, 1999, together with a helper, she saw inside the establishment Ate Eden Allado, a young man and an old man “tigulang”. Said old man who intended to buy ballpen was talking to Eden. Then she noticed a young man coming in and out the store, asking the price of a binder which enabled her to see the face of the young man (later identified as accused Gerry Sabangan). Suddenly she saw accused Gerry Sabangan pull a revolver from the left waist and pointed it to the old man. Sensing

danger she raised her hands and shouted “Ate Eden” to put Eden on guard. Three gunshots rang from the revolver of Gerry Sabangan and at a distance of 1 ½ meters she saw the old man fell down. In short, she saw accused Gerry Sabangan shot the old man three times: the first shot aimed at the head while the succeeding shots aimed at the back. Her Ate Eden was shouting and asking for help. The old man was later identified as Abe Felonia. Furthermore, she saw accused Gerry Sabangan picked up the bag of Abe Felonia and ran outside the store towards Serquina Store. (TSN, Jan. 29, 2003, pages 64-71).

Navales says that upon the invitation of a certain Sir Salmorin, she was able to see and recognized accused Gerry Sabangan at a police outpost in Kidapawan as the same person who shot Abe Felonia. She executed two sworn statements in relation to the case dated February 9, 2000 and February 18, 2000. She identified accused in open court, saying that “I recognize the face and I remember he has a mole.” (TSN, Jan. 29, 2003, pages 71-73).

On cross-examination, Navales says that when attending her store she would ask the needs of customers who enter the store she is tending. She saw accused Gerry Sabangan passed by the counter and moved around the open shelves for notebooks at the middle of the store before he pulled out his revolver with which he shot Abe Felonia at the back. Felonia was side by side with Allado. Abe Felonia was rushed to the hospital and then policemen arrived. She was nervous such that all she could manage to say to police investigators was “somebody was shot and I did not want any trouble.” Right after the incident she did not want to be investigated about the crime; she initially did not cooperate despite the repeated urgings of the police until her cousins told her to cooperate and tell what she witnessed. After identifying accused Gerry Sabangan through several pictures, she was invited by the police on October 18, 2000 if he can identify a suspect who was at a police outpost and she identified that suspect (Gerry Sabangan) as the same person who shot Abe Felonia. (TSN, Jan. 29, 2003, pages 73-85).

Marlon Cordero says that he is a street sweeper of Kidapawan City. While doing his chores about 1:30 p.m. on December 27, 1999 at the vicinity of Serquina Store, Mega Market, he heard gunshots from the Public Terminal for Arakan. He observed people running and saw two guys, one after the other, fleeing from the terminal running towards his direction. He described both guys as wearing jacket: the first one wearing jacket was armed with a gun and even bumped him, and in fact, had an eye to eye contact. The second person in chaleco-type jacket was also armed with a gun and asked him where the first guy ran. He pointed to Talisay and the second guy followed the first guy. Later he identified the first guy through pictures from the police and saw in person for the second time same guy at a police outpost in Kidapawan on February 18, 2000. He saw in person for the second time the second guy while detained at the Kidapawan police station sometime June 2002. He executed three (3) affidavits identified as Exhibits “[F]”, “[F-1]” and “[F-2]”. In open court, he positively pointed to accused Jerry Sabangan a[s] the guy who bumped him and accused Noli Bornasal as the second guy who asked him where the first guy ran. (TSN, Jan. 30, 2003, pages 90-101).

On cross-examination, Mr. Cordero disclosed that he was about 15-20 meters away from the terminal where the crime took place, which is

on left adjacent side of Serquina Store (Exhibit “G”). When bumped, he stared at accused Sabangan who quickly resumed running. He recalls Sabangan as wearing an old jacket. He went to a nearby Malaluan Clinic and learned that a barangay captain was shot to death. For fear of his life, he initially did not cooperate but eventually told the police about what he witnessed about the two persons by executing a sworn statement on February 4, 2000. On February 18, 2000, upon invitation of the police, he went to the police station where he saw an apprehended suspect whom he identified and pointed to as the same person, with a mole on the right face, who bumped him after the shooting incident on December 27, 1999. (TSN, Jan. 30, 2003, pages 101-115).

Private Complainant **Mrs. Galladora** was recalled on the witness stand on January 31, 2003 and presented the following documents for expenses incurred as a consequence of the death of her father:

Exhibit “H” – Official Receipt No. 403 issued by Somo Funeral Homes dated 09 May 2000 for the sum of ₱68,000.00 for the embalming, coffin and services on the corpse of Abe Felonia.

Exhibit “I” – Original Cash Invoice No. 5750 issued by Espinosa’s Hardware & Construction Supply for expenses for the tomb ₱10,650.00.

Exhibit “J” – Cash Invoice No. 1192 issued by F. Abellana Sari-sari Store for grocery expenses for refreshments on the wake of the latter in the amount of Twenty-Seven Thousand Seven Hundred Fourteen Pesos (₱27,714.00).

Exhibit “K” – Receipt issued by Regaspi Store dated 30 December 2000 for incurred expenses for the rice during the wake of the latter which amounted to Twenty[-]Three Thousand Fifty Pesos (₱23,050.00).

Exhibit “L” – Summary of the total expenses incurred by the family of the victim Abe Felonia who was shot to death on 27 December 1999 – Two Hundred Thirty-Four Thousand Eighty Pesos (₱234,080.00).

Finally, Mrs. Galladora committed to pay counsel the sum of ₱100,000.00 as and for attorney’s fees.²⁴ (Emphases supplied.)

During its turn, the defense called to the witness stand Sabangan and Bornasal,²⁵ who both denied any involvement with Felonia’s death; Eddie Reyes (Eddie), Jesus Reyes (Jesus),²⁶ Carmelito Reyes (Carmelito), Romeo de Guzman (De Guzman), Ronald Reyes (Ronald),²⁷ and Mayette Orot (Mayette),²⁸ Sabangan’s relatives and neighbors in Barangay Luhong, Antipas, Cotabato, who corroborated Sabangan’s alibi; and Andres Comeki (Comeki),²⁹ Bornasal’s co-worker, who supported Bornasal’s assertions.

²⁴ CA *rollo*, pp. 23-27.

²⁵ TSN, November 6, 2003.

²⁶ TSN, October 6, 2003.

²⁷ TSN, November 4, 2003.

²⁸ TSN, March 11, 2004.

²⁹ TSN, July 15, 2004.

The documentary exhibits for the defense consisted of two Certifications issued by Carmelito, the Barangay Captain of Luhong, Antipas, Cotabato.³⁰

The RTC gave the following rundown of the evidence for the defense:

Eddie Reyes is a longtime resident of Luhong, Antipas, Cotabato and the brother of the mother of accused [G]erry Sabangan. He claims that on December 27, 1999, he was in Luhong together with accused [G]erry Sabangan, Jesus Reyes, [Mayette] Orot, and others from 8:00 a.m. to 5:00 p.m., preparing a makeshift to be used for the wedding of a relative Ricky Castillo. Luhong is 40 kilometers away from Kidapawan City. (TSN, October 6, 2003, pages 3-5).

On cross-examination, Eddie Reyes admitted he did not execute any affidavit to support the innocence of accused Sabangan; in fact he found it unnecessary and did not even make a statement before the Kidapawan police precinct where he visited once. He failed to produce the marriage contract of his relative Ricky Castillo. During his testimony, this Court observed that “a woman in black blouse (Semperia Sabangan) is making signal to the witness.” (TSN, October 6, 2003, pages 5-8).

Jesus Reyes also a long time resident of Luhong is the first cousin of the mother of accused. He corroborated the direct testimony of Eddie Reyes about the alleged presence of accused Sabangan at Luhong the whole day of December 27, 1999. He knew about the arrest of Sabangan but he did not bother to go to the police nor execute an affidavit to support the innocence of accused Sabangan. The wedding of the relative took place on December 30, 1999 but did not bring the contract of marriage. (TSN, Oct. 6, 2003, pages 12-18).

Carmelito Reyes the barangay chairman of Brgy. Luhong, Antipas, North Cotabato from 1998 to 2002 claims that on December 27, 1999 the whole day, he was in Brgy. Luhong and at that time he saw the accused [G]erry Sabangan helping the preparation of the banquet for the wedding of their relative, for which he issued a certification to that effect dated February 26, 2000 and marked as Exhibit “2”. He further says that accused [G]erry Sabangan was arrested by Kidapawan authorities without Warrant and without any coordination from him as Brgy. Official, per certification he issued dated April 23, 2001 and marked as Exhibit “1.”

But he admitted that: (1) he has [no] personal knowledge where, how and when accused Sabangan was arrested by the police; (2) did not execute any affidavit to support the foregoing narrations and (3) he was requested to testify by the family of accused and his constituents. (TSN, Nov. 4, 2003, pages 4-13).

Romeo de Guzman merely corroborated the testimonies of the previous defense witnesses. He admitted: (1) that he did not go to the police to question why accused [G]erry Sabangan was arrested; (2) he was requested to testify by the mother of accused Sabangan (3) the makeshift was done not in Barangay Luhong but in an adjacent barrio Barangay Greenhills, one kilometer away. (TSN, Nov. 4, 2003, pages 17-22).

Ronald Reyes is another brother of the mother of accused Sabangan and whose house is adjacent to the house of said accused. He says that about 1:30 p.m. on December 27, 1999, he took lunch together with accused Sabangan and Carmelita Reyes at the big house; thereafter they joined the preparation of bamboo materials which were transported to a neighboring barrio Greenhills the following days. He saw two policemen arrest accused Sabangan at his house. Sabangan was not handcuffed and was brought by the police on board a motorcycle. He admitted that despite his knowledge about the arrest of Gerry Sabangan, he did not report to the police nor execute an affidavit about accused Sabangan's presence in Luhong the whole day of December 27, 1999, as he find the same unnecessary. (TSN, Nov. 4, 2003, pages 23-29).

Accused **Gerry Sabangan** claims innocence saying that on December 27, 1999, he was in Luhong participating in the preparation of materials to be used in the makeshift for the wedding of a relative Ricky Castillo which took place on December 29, 1999. During the entire period from December 1999 to February 17, 2000, he was in Luhong, Antipaz. While irrigating his farm early morning on February 17, 2000 his uncle Silverio Orot who is a police officer and a comrade requested him to do an errand. While on their way to Kidapawan, Orot stopped the vehicle they were riding on and a group of about 10 policemen accosted him as accused in the killing of Abe Felonia. In spite protest and resistance, he was handcuffed and forcibly brought to Kidapawan Police Precinct. Some relatives visited him in jail. After about one year, he met co-accused Noli Bornasal in jail. He did not request his relative to execute affidavit in support of his innocence. He left the hiring of lawyer to his mother. (TSN, Nov. 6, 2003, pages 2-14).

When cross-examined, Sabangan admits that he has gone to Kidapawan several times and is familiar with the place like the Kidapawan Market and the jeep terminal. It takes an hour to ride from Luhong to Kidapawan. He did not bother to tell friends and relatives to execute affidavits for his defense. He does not know as he learned about the identity of the victim only when he was in jail. (TSN, Nov. 6, 2003, pages 14-18).

Accused **Noli Bornasal** also claims innocence saying that he was in Arakan Valley the whole day of December 27, 1999 tending the store of his sister. He was arrested by the Police on June 20, 2002 while buying commodities in Kidapawan, and was brought to the City Hall for his involvement in "shabu" and the killing of Abe Felonia. He knows Abe Felonia as the barangay captain of Duroloman, Arakan Valley but denies participation i[n] the killing. He denies knowing accused Gerry Sabangan. (TSN, Nov. 6, 2003, pages 21-24).

When cross-examined: QUESTION – "If a person would ask you to identify for him, you would be glad to do that, because you know and you could identify Abe Felonia", ANSWER – "Yes sir, that is the barangay captain". Moreover, he admits about his familiarity with Kidapawan Market, including terminals where he goes when buying commodities. It takes three-hour ride from Arakan Valley to Kidapawan. He did not request his sister and father who are aware of his detention to execute affidavits to support his claim of non-participation of the crime; in fact he did not request them to testify for him. He learned about the death

of Abe Felonia in the afternoon of December 27, 1999 from passengers coming from Kidapawan. (TSN, Nov. 6, 2003, pages 25-30).

Mayette Orot is the daughter of policeman Silverio Orot; she and accused Sabangan are first cousins as their mothers are sisters. She attended the 1999 Christmas reunion at the Sabangan residence in Luhong and stayed thereat until December 28, 1999. On December 27, 1999, she took lunch with accused and saw him still at the basketball court at 3:00 where relatives are preparing for the banquet of the wedding of a cousin. She visited accused Sabangan at the police precinct but did not tell the police about the presence of accused in Luhong on December 27, 1999. (TSN March 11, 2004, pages 2-12).

Andres Comeki testified for accused Noli Bornasal. He says that the whole day of December 27, 1999 he and accused Noli Bornasal were tending the grocery store of Edna Agana at Poblacion Arakan Valley, Cotabato; on that day they were just inside the store attending to customer and they never went out of the said store or go out to any other place. He learned about the arrest of Noli Bornasal in 2002 but did not execute any affidavit in defense of Noli Bornasal; in fact, he considers an affidavit unnecessary as nobody requested him to do so. (TSN, July 15, 2004, pages 2-9).³¹ (Emphases supplied.)

The RTC promulgated its Decision on November 25, 2004 finding both Sabangan and Bornasal guilty beyond reasonable doubt of the murder of Felonia. The trial court sentenced them thus:

WHEREFORE, finding sufficient evidence to prove the guilt of accused beyond reasonable doubt, this Court hereby sentences both accused GERRY SABANGAN and NOLI BORNASAL to suffer the penalty of RECLUSION PERPETUA.

Both accused are further sentenced to pay and indemnify the heirs of Abe Felonia the following sums:

- 1) ₱50,000.00 civil indemnity;
- 2) ₱200,000.00 moral damages;
- 3) ₱234,080.00 actual damages;
- 4) ₱50,000.00 exemplary damages;
- 5) ₱50,000.00 attorney’s fees.³²

Sabangan and Bornasal directly appealed the RTC judgment to this Court,³³ but in a Resolution³⁴ dated August 8, 2005, the Court, in accordance with its ruling in *People v. Mateo*,³⁵ referred the case to the Court of Appeals for appropriate action and disposition.

³¹ CA rollo, pp. 27-29.
³² Id. at 33.
³³ Id. at 34.
³⁴ Id. at 36.
³⁵ G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

In their Brief³⁶ before the Court of Appeals, Sabangan and Bornasal, represented by the Public Attorney's Office (PAO), assigned the following errors on the part of the RTC in rendering its judgment of conviction:

I

THE COURT A *QUO* GRAVELY ERRED IN CONVICTING BOTH ACCUSED OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II

THE COURT A *QUO* GRAVELY ERRED IN ORDERING BOTH ACCUSED TO PAY ₱234,080.00 AS ACTUAL DAMAGES.³⁷

Sabangan reiterated his alibi that at around 1:30 in the afternoon of December 27, 1999, he was at Barangay Luhong, Antipas, Cotabato, and was helping several relatives prepare a makeshift structure to be used for the wedding ceremony of another relative, Ricky Castillo (Castillo), on December 29, 1999. Therefore, it was physically impossible for him, on the same date and time, to be in Kidapawan City when Felonia was killed, considering that Kidapawan City was approximately 40 kilometers away from Barangay Luhong, Antipas, Cotabato.

Bornasal argued that no evidence whatsoever was presented to prove his actual participation in the killing of Felonia. Aside from the testimony of prosecution witness Cordero, who saw Bornasal running behind Sabangan away from the crime scene, no other circumstantial evidence was presented to establish with moral certainty the alleged conspiracy between Sabangan and Bornasal to kill Felonia.

In the alternative, Sabangan and Bornasal asserted that the award of actual damages in the total sum of ₱234,080.00 was excessive. Only the following claims were sufficiently proven during trial: ₱68,000.00 for Felonia's coffin, embalming, and other funeral services; ₱27,714.00 for the food for guests during Felonia's wake; and ₱10,650.00 for the construction of Felonia's tomb.

The People, represented by the Office of the Solicitor General, in its Brief,³⁸ insisted that the prosecution had proven beyond reasonable doubt the guilt of Sabangan and Bornasal for the murder of Felonia. Prosecution witnesses Allado and Navales, who were present at the time and place of Felonia's shooting, positively identified Sabangan as the shooter. Prosecution witness Cordero was able to establish the existence of

³⁶ CA *rollo*, pp. 48-64.

³⁷ Id. at 50.

³⁸ Id. at 80-110.

conspiracy when he testified that Bornasal, also armed with a gun, was running right behind Sabangan away from the crime scene.

In its Decision dated November 20, 2009, the Court of Appeals sustained the conviction of Sabangan, but acquitted Bornasal on the ground of reasonable doubt, and modified the award of damages. The dispositive portion of the judgment of the appellate court reads:

WHEREFORE, premises considered, the instant appeal is **PARTLY GRANTED**. The assailed November 25, 200[4] Decision of the Regional Trial Court (RTC), 11th Judicial Region, Branch 16, Davao City, in Criminal Case No. 46,888-01, finding appellant Gerry Sabangan guilty beyond reasonable doubt of murder is hereby **AFFIRMED with modification**, in that appellant is ordered to pay the heirs of the late Abe Felonia the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages and ₱106,354.00 as actual damages.

On reasonable doubt, appellant Noli Bornasal is hereby **ACQUITTED** of the crime charged and his immediate **RELEASE** from custody is hereby ordered, unless he is being held for some other lawful cause.

The Superintendent of the Davao Penal Colony, Panabo City, Davao del Norte is **ORDERED** to implement this Decision forthwith and to **INFORM** this Court, within five (5) days from receipt hereof of the date appellant Noli Bornasal was actually released from confinement.³⁹

Hence, the present appeal by Sabangan.

The People manifested that it had already exhausted its arguments before the Court of Appeals, hence, it will no longer file any supplemental brief.⁴⁰

Sabangan filed a Supplemental Brief⁴¹ in which he protested that the manner by which the investigating police officers conducted his out-of-court identification by the witnesses was grossly suggestive. Sabangan averred that he was made to sit outside a police outpost, while the police officers fetched the witnesses from their homes and boarded said witnesses into a heavily tinted vehicle, which passed by the police outpost where Sabangan was. The police officers then asked the witnesses to confirm whether the man sitting outside the police outpost was the one who shot Felonia. Such manner of identification allegedly planted already in the witnesses' minds that Sabangan was indeed Felonia's assailant and was, therefore, highly unreliable, if not inadmissible in evidence.

³⁹ *Rollo*, p. 28.

⁴⁰ *Id.* at 39-43.

⁴¹ *Id.* at 51-56.

The appeal is unmeritorious. The Court sustains Sabangan's conviction for Felonia's murder.

Murder is defined and penalized under Article 248 of the Revised Penal Code, as amended:

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;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis supplied.)

The essential elements of murder, which the prosecution must prove beyond reasonable doubt, are:

1. That a person was killed.
2. That the accused killed him.
3. That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248.
4. The killing is not parricide or infanticide.⁴² (Citation omitted.)

The totality of the evidence for the prosecution against Sabangan establishes with moral certainty all the essential elements of the crime of murder qualified by treachery.

⁴²

People v. De la Cruz, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 746.

It was already stipulated by the parties, even prior to trial, that Felonia was shot to death at around 1:30 in the afternoon on December 27, 1999 in Kidapawan City, Cotabato.

Prosecution witnesses Allado and Navales, who were present at the time and place of the shooting, positively identified Sabangan as the one who shot Felonia. Allado and Navales, together with Felonia, were all inside Navales's Mega Market in the early afternoon of December 27, 1999. The store is merely four by six meters big. Navales noticed Sabangan as the latter came in and out of the store at least three times before actually shooting Felonia. Navales also had a clear view of Sabangan's face as she was facing Allado and Felonia, who were standing side by side, when Sabangan stepped behind the latter two, pulled out a gun, and aimed it at the back of Felonia's head. Allado, for her part, came face to face with Sabangan when Felonia fell down after being shot three times, and Sabangan grabbed Felonia's bag. Allado grappled with Sabangan for Felonia's bag for a moment until Sabangan was able to get hold of the bag away and run out of the store.

The killing of Felonia by Sabangan was qualified by treachery.

Treachery exists when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.⁴³ The essence of treachery is the sudden and unexpected attack by the aggressor on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims.⁴⁴

In this case, Felonia was at a store, chatting with Allado. He was unarmed with his guard down. Sabangan went in and out of the store, around three times, apparently waiting for the perfect opportunity to commit the crime. When he saw his chance, Sabangan positioned himself behind the unsuspecting Felonia, suddenly brought out his gun, and without the slightest provocation on Felonia's part, shot the latter once in the head and twice in the back. Sabangan clearly employed treachery in killing Felonia. Sabangan's attack on Felonia was sudden and unexpected, the manner of which was deliberately adopted to give Felonia little or no chance at all to defend himself or retaliate.

The Court though does not find convincing proof of evident premeditation.

⁴³ Paragraph 16, Article 14, Revised Penal Code, as amended.

⁴⁴ *People v. Gutierrez*, G.R. No. 188602, February 4, 2010, 611 SCRA 633, 644.

In order to be appreciated, the circumstance must not merely be premeditation; it must be “evident premeditation.”⁴⁵ To warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.⁴⁶ Evident premeditation, like other circumstances that would qualify a killing as murder, must be established by clear and positive evidence showing the planning and the preparation stages prior to the killing. Without such evidence, mere presumptions and inferences, no matter how logical and probable, will not suffice.⁴⁷

The prosecution’s evidence herein pertained merely to the actual commission by Sabangan of the crime. It did not submit any proof that Sabangan, at some prior time, determined to kill Felonia; that Sabangan performed an act manifestly indicating that he clung to his determination to kill Felonia; and that there was sufficient interval of time between his determination and execution which allowed Sabangan to reflect upon the consequences of his act.

Finally, since Felonia and Sabangan were unrelated, the killing of Felonia by Sabangan would not qualify as parricide or infanticide.

There is no cogent reason for the Court to overturn the credence and evidentiary value accorded by both the RTC and the Court of Appeals to the positive identification of Sabangan as Felonia’s assailant by the disinterested witnesses of the prosecution, rather than Sabangan’s alibi, corroborated by his relatives, that he was at some other place at the time of the commission of the crime.

As the trial court correctly pointed out:

Alibi is a telltale sign of weak defense and not an explanation of innocence.

In order to give credence to the defense of alibi, it must not only appear that the accused interposing the same was at some other place but also that it was physically impossible for him to be at the scene of the crime at the time of its commission.

In the case at bench, it was established that [the] travel time from Luhong to Kidapawan City is only about an hour. As such, it was not physically impossible for accused Gerry Sabangan to travel from Luhong to Kidapawan City, the place where the crime was committed, simply because you can reach Kidapawan for only an hour by riding on a Jeepney from Luhong.

⁴⁵ *People v. Torejas*, 150 Phil. 179, 195-196 (1972).

⁴⁶ *People v. Tigle*, 465 Phil. 368, 382-383 (2004).

⁴⁷ *People v. Aytalin*, 411 Phil. 863, 879 (2001).

Moreover, Sabangan's witnesses are mostly his relatives, friends and neighbors who are prone to concoct and fabricate evidence. x x x.

The defense of alibi may not prosper if it is established mainly by the accused themselves and their relatives, and not by credible persons. For against their positive identification by the prosecution witnesses the appellant's alibi, which constitutes the sum of their defenses, became weak.⁴⁸ (Citations omitted.)

The appellate court aptly added that:

The alibi resorted to by appellant is worthless in the face of the positive identification made by reliable prosecution eyewitnesses who have not been found to have any reason or motive to falsely testify but whose only motive can well be to bring before the bar of justice the person who committed the crime. Appellant's alibi that he was in Barangay Luhong cannot be accepted since it was not impossible for him to have left the said place after taking lunch which is usually 12:00 noon and perpetrated the crime at 1:30 in the afternoon.

x x x x

Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.

For the defense of alibi to prosper, it must be shown with clear and convincing evidence that at the time of the commission of the crime charged, the accused is in a place other than the *situs* of the crime such that it was physically impossible for him to have been at the *situs criminis* when the crime was committed.⁴⁹ (Citations omitted.)

Contrary to Sabangan's contention, there appears no irregularity in the conduct by the investigating police officers of the out-of-court identification of Sabangan by the witnesses.

The following ruling of the Court in *People v. Teehankee, Jr.*⁵⁰ is instructive on the conduct of and test for a valid out-of-court identification:

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. Since corruption of **out-of-court** identification contaminates the integrity of **in-court** identification during

⁴⁸ CA rollo, pp. 30-31.

⁴⁹ Rollo, pp. 20-22.

⁵⁰ 319 Phil. 128, 180 (1995).

the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. 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.)

The out-of-court identification made by the witnesses in the case at bar complies with the totality of circumstances test. Given the particular circumstances in this case, the probability that the witnesses were influenced to misidentify Sabangan as Felonia's assailant seems farfetched.

First, the affidavits of Navales and Allado establish that even before they identified Sabangan in person on February 18, 2000, they already recognized Sabangan among the photographs of different people shown to them during the police's initial investigation on February 7, 2000.⁵¹ It would then appear that the out-of-court identification of Sabangan by Allado and Navales on February 18, 2000 was only to confirm the earlier out-of-court identification of Sabangan by the same witnesses on February 7, 2000. It is worthy to note that in both instances, Allado and Navales confidently and consistently identified Sabangan as the person who shot Felonia.

Second, based on their respective accounts of the shooting incident, Allado and Navales, at different times, had the opportunity to clearly view Sabangan's face. Their candid and detailed testimonies prove that they were both fully attentive of what was happening at the time immediately before, during, and after Felonia's shooting.

Third, and more importantly, it is settled that an out-of-court identification does not necessarily foreclose the admissibility of an independent in-court identification and that, even assuming that an out-of-court identification was tainted with irregularity, the subsequent identification in court cured any flaw that may have attended it.⁵² In the instant case, the independent in-court identification of Sabangan by Allado and Navales during trial proper was categorical, candid, and positive, hence, worthy of credence and weight.

In conclusion, Sabangan is found guilty beyond reasonable doubt of murdering Felonia, the killing being qualified by treachery. With the prohibition against the imposition of the death penalty by Republic Act No. 9346, the only imposable penalty for the crime of murder is *reclusion*

⁵¹ Records, pp. 259-261 and 263-265; *see* Exhibits C and E.

⁵² *People v. Lumanog and Santos*, G.R. Nos. 182555, 185123, and 187745, September 7, 2010, 630 SCRA 42, 125.

perpetua. The Court adds that accused-appellant shall not be eligible for parole. Again, pursuant to Section 3 of Republic Act No. 9346, “[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.”⁵³

When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages, in lieu of actual damages.⁵⁴ Jurisprudence has decreed that the award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime, while moral damages are mandatory in cases of murder, without need of allegation and proof other than the death of the victim. Exemplary or corrective damages, in turn, are imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages as provided by Article 2229 of the Civil Code.

The grant of actual damages in the total amount of ₱106,354.00, representing funeral and burial expenses, is proper being duly supported by receipts. The award of moral damages in the amount of ₱50,000.00 is also correct pursuant to recent rulings of the Court.⁵⁵ However, the Court increases the awards of civil indemnity and exemplary damages to ₱75,000.00 and ₱30,000.00, respectively, in accordance with the latest jurisprudence.⁵⁶

WHEREFORE, in view of the foregoing, the Decision dated November 20, 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 00329-MIN is **AFFIRMED with MODIFICATION**, increasing the amounts of civil indemnity and exemplary damages awarded to the heirs of Abe Felonia to ₱75,000.00 and ₱30,000.00, respectively.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


⁵³ *People v. Tadah*, G.R. No. 186226, February 1, 2012, 664 SCRA 744, 747.

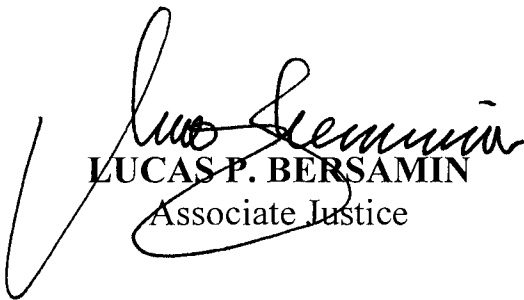
⁵⁴ *People v. Escleto*, G.R. No. 183706, April 25, 2012, 671 SCRA 149, 160-161.

⁵⁵ *People v. Malicdem*, G.R. No. 184601, November 12, 2012, 685 SCRA 193, 206-207; *People v. Laurio*, G.R. No. 182523, September 13, 2012, 680 SCRA 560, 572-573.

⁵⁶ *Id.*

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
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