



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **01 March 2021** which reads as follows:*

“G.R. No. 244605 (*People of the Philippines v. Sande H. Ybañez*). — This case involves a shooting incident committed against one who was unaware of the impending doom which befell him. The assailant fired one swift shot at the back of the victim’s head, which caused his instantaneous death.

ANTECEDENTS

Sande H. Ybañez¹ (Sande) was charged with the crime of Murder under Article 248 of the Revised Penal Code (RPC) in the following Information:

That on or about past 2:00 [a.m.] of October 21, 2008, at Purok I, Barangay Lower Salug Daku, Mahayag, Zamboanga del Sur, Philippines, within the jurisdiction of this court, accused Sande H. Ybañez armed with a firearm and with intent to kill, and by means of treachery, did then and there wilfully, unlawfully and feloniously shoot POI Bonifacio Pinongcos, thereby inflicting upon the latter a gunshot wound at the back of his head, and as a result the latter died, accused employed the means, method or form which tend directly and especially to ensure its execution without risk to himself arising from the defense which the victim could make as the latter was not even aware that he would be shot by the aforementioned accused.

Acts contrary to law.²

¹ Referred to as Dodoy Ybañez in some parts of the records.

² Records, Vol. 1, p. 1.

Arraigned, Sande pleaded not guilty;³ hence, trial ensued.

The prosecution established that, in the evening of October 20, 2008, PO1 Bonifacio Pinongcos⁴ (Bonifacio) attended a house party hosted by Spouses Ricardo Debalucos (Ricardo) and Alicia Debalucos (Alicia, collectively Spouses Debalucos) at Purok 1, Lower Salug Daku, Mahayag, Zamboanga del Sur. Tired from his travel, Bonifacio slept from 11:00 p.m. until 2:00 a.m. the following day. When Bonifacio woke up, Ricardo offered him food, and asked his son to buy beer. Around 2:00 a.m., Ricardo, Alicia and Bonifacio were eating in the kitchen when Sande barged inside the house, pointed a gun at the back of Bonifacio's head, and fired once. Bonifacio died on the spot. Sande then took the service firearm tucked in Bonifacio's waist and fled.⁵

The shooting incident was reported to the police and after investigation, Ricardo and Alicia pointed to Sande as the assailant. Spouses Debalucos knew Sande because they were next-door neighbors and Sande was the live-in partner of their daughter, Marvie Debalucos (Marvie). Four hours after the shooting, or at 6:00 a.m. of October 21, 2008, Sande was arrested.⁶

In the Certificate of Death, Dr. Wilson G. Lumapas (Dr. Lumapas) stated that Bonifacio's immediate cause of death was cardiopulmonary arrest, antecedent to a gunshot wound on the head.⁷

Initially, Sande denied the accusation against him.⁸ During trial, however, he narrated a different version of events. On October 20, 2008, he arrived home at 11:00 p.m. after driving his *habal-habal*. He was resting in the sala when he heard Bonifacio knocking on his front door to invite Marvie for a drinking spree. Because Marvie was already asleep, Bonifacio left. Shortly after, Sande heard Bonifacio loudly say that Marvie should have married a professional instead of a *habal-habal* driver who does not dress well. Later, Bonifacio returned to invite Marvie, while urinating at the side post of Sande's house. For the third time, Bonifacio went back to call Marvie while again urinating outside the house. Rattled over Bonifacio's comments and behavior, Sande lost self-control. He went to Ricardo and Alicia's house where he saw Bonifacio about to pull out his service firearm. Sande countered by attacking Bonifacio and wrestled for the possession of the gun. A shot was fired and Bonifacio fell, but Sande was uncertain who pulled the trigger.⁹

In its Decision,¹⁰ the Regional Trial Court (RTC) convicted Sande of Murder, and sentenced him as follows:

³ *Id.* at 50.

⁴ Referred to as Jun Pinongcos in some parts of the records.

⁵ TSN, August 25, 2010, pp. 4-13, records, Vol. 2, pp. 39-48; TSN, November 21, 2012, pp. 3-5, records, Vol. 2, pp. 101-103.

⁶ TSN, May 13, 2010, pp. 4-9, records, Vol. 2, pp. 22-27; TSN, May 31, 2012, pp. 3-8, records, Vol. 2, pp. 89-94.

⁷ Records Vol. 1, p. 331. See TSN, October 29, 2014, pp. 3-5, records, Vol. 2, pp. 138-140.

⁸ *Id.* at pp. 54 and 65, Pre-trial Order.

⁹ TSN, March 2, 2017, pp. 3-14, records, Vol. 2, pp. 146-157.

¹⁰ CA *rollo*, pp. 67-83; penned by Presiding Judge Jaime B. Caberte, Decision dated June 9, 2017.

WHEREFORE, in view thereof, the Court, finds the herein accused guilty of the crime of Murder qualified by the aggravating circumstance of treachery without mitigating circumstance being proven, [and] sentences **SANDE YBAÑEZ** to suffer the penalty of *reclusion perpetua*.

Further, **SANDE H. YBAÑEZ** is ordered to pay moral damages to the family of the victim, the amounts of P75,000.00 as civil indemnity, P75,000.00 moral damages, P75,000.00 as exemplary damages, P50,000.00 as temperate damages, and to pay the interest at the rate of six (6%) per annum from the finality of this decision until fully paid, to be imposed on the civil indemnity, moral damages, exemplary damages and temperate damages herein awarded applying the recent ruling in [*People v. Jugueta*.]

SO ORDERED.¹¹

The RTC found the testimonies of the prosecution witnesses as credible, and held that Bonifacio was killed treacherously because the shooting was sudden and unexpected. Absent satisfactory proof of unlawful aggression on the part of the victim, Sande's claim of self-defense was not given credence.

On appeal, Sande argued that his guilt was not proven beyond reasonable doubt because he was defending himself from Bonifacio's assault. He questioned the credibility of the prosecution witnesses, particularly Alicia and Ricardo. Alicia testified that, after shooting Bonifacio, Sande recovered the firearm from the victim's hip; however, this circumstance was not corroborated by Ricardo. The witnesses also feigned knowledge of Bonifacio and Marvie's dating relationship. Sande also maintained that the prosecution's evidence was insufficient to prove the *corpus delicti* of the offense because Dr. Lumapas who issued the Certificate of Death was not the same physician who examined the cadaver of the victim. Also, in the police's Special Written Report, neither the gun nor the bullet was recovered from the crime scene.¹² On the other hand, the Office of the Solicitor General asserted that the testimonies of Alicia and Ricardo proved the death of Bonifacio, which is the *corpus delicti* in the crime of Murder. Spouses Debalucos were credible eyewitnesses to the crime, there being no showing that they were motivated by revenge or ill-feeling to falsely implicate Sande. Lastly, the claim of self-defense cannot prosper because Sande was the unlawful aggressor.¹³

The Court of Appeals (CA) denied the appeal on September 27, 2018.¹⁴ Upholding the credibility of the prosecution witnesses, the CA affirmed that treachery attended the commission of the crime. Moreover, the physician's autopsy report and the police investigation report were not indispensable in proving the *corpus delicti*. The prosecution satisfactorily proved that: (1) the victim has died; (2) his death was caused by a gunshot wound behind his head; and, (3) Sande was the assailant. The CA likewise rejected Sande's claim of

¹¹ *Id.* at 83.

¹² *Id.* at 52-65, Brief for the Accused-Appellant.

¹³ *Id.* at 96-110, Appelle's Brief.

¹⁴ *Rollo*, p. 11.

self-defense, and ruled that the mockery allegedly uttered by Bonifacio did not classify as provocation which endangered Sande's life.¹⁵

Hence, this recourse. Sande impugns the credibility of the prosecution witnesses and interposes the inconsistencies in their testimonies. He also maintains that the *corpus delicti* of the offense was not proven. Lastly, Sande insists that he acted in self-defense.¹⁶

RULING

The appeal lacks merit.

Sande assails his conviction for the crime of Murder on the ground that the testimonies of Ricardo and Alicia are incredible. On this point, we stress that the lower court's assessment on the credibility of the prosecution witnesses and the veracity of their testimonies are given the highest degree of respect, especially if there is no fact or circumstance of weight or substance that was overlooked, misunderstood, or misapplied, which could affect the result of the case.¹⁷ Moreover, the trial court had the best opportunity to determine the credibility of the prosecution witnesses. Its unique vantage point allows it to observe the conduct and demeanor of a witness, putting the trial court in the best position to determine whether the witness is telling the truth.¹⁸ Here, Alicia recalled in detail how the shooting transpired, *viz.* :

PROS. MORALES: On October 20, 2008 at about 10:00 o'clock in the evening, do you remember where were you?

MRS. DEBALUCOS: Yes, in our house.

PROS. MORALES: In Lower Salug Daku, Mahayag, Zamboanga del Sur?

MRS. DEBALUCOS: Yes, Sir.

PROS. MORALES: And do you remember who were with you in your house at that time?

MRS. DEBALUCOS: My husband and children, Sir.

PROS. MORALES: On that day and about that time, was there any person who arrived in your house?

MRS. DEBALUCOS: Yes, there were two (2) persons who arrived, Sir.

PROS. MORALES: And do you remember who were those persons

¹⁵ *Id.* at 4-11. CA-Cagayan de Oro City's Decision, docketed as CA-G.R. CR-HC No. 01690-MIN, penned by Associate Justice Edgardo A. Camello, with the concurrence of Associate Justices Perpetua T. Atalpaño and Walter S. Ong. The dispositive portion, reads:

FOR THESE REASONS, the appeal is DENIED. The Regional Trial Court Decision dated June 9, 2017 is AFFIRMED *in toto*.

SO ORDERED. (*Id.* at 11.)

¹⁶ CA rollo, pp. 48-65. See rollo, pp. 22-25.

¹⁷ See *People v. Antonio*, G.R. No. 229349, January 29, 2020, citing *People v. Cirbeto*, 825 Phil. 793 (2018); *People v. Magallano, Jr.*, G.R. No. 220721, December 10, 2018; *People v. Sibbu*, 808 Phil. 276, 285-286 (2017); and *People v. Lacaden*, 620 Phil. 807, 819 (2009).

¹⁸ See *People v. Antonio, id.*; *People v. Magallano, Jr., id.*, citing *People v. Harovilla*, 436 Phil. 287, 293 (2002); and *People v. Musa*, 609 Phil. 396, 410 (2009); *People v. Lacaden, id.*

who arrived in your house?
 MRS. DEBALUCOS: I remember, the policeman and that other person, there were two (2) of them.

PROS. MORALES: Who was that policeman?
 MRS. DEBALUCOS: JUN PINONGCOS.

PROS. MORALES: What is the relation of that policeman whom you said JUN PINONGCOS to BONIFACIO PINONGCOS whom you said you have known?
 MRS. DEBALUCOS: The same person, Sir, JUN PINONGCOS is BONIFACIO PINONGCOS.

x x x x

PROS. MORALES: Now, what happened when they arrived in your house?
 MRS. DEBALUCOS: They were eating and drinking, Sir.

x x x x

PROS. MORALES: Now, do you remember at about 2:00 o'clock dawn the following day on October 21, 2008 if where were you?
 MRS. DEBALUCOS: I was at the kitchen and I remember that he (Sandy Ybañez) entered into the kitchen, I saw him (witness again pointing to the accused) entered our kitchen and the policeman who was then seated was shot by him once from behind when the latter was eating.

PROS. MORALES: Go back to the time you were at the kitchen. What were you doing at the kitchen?
 MRS. DEBALUCOS: I was washing dishes and I was watching when he suddenly entered.

x x x x

PROS. MORALES: Who were with you in the kitchen, if any?
 MRS. DEBALUCOS: My husband and one of my children, Sir.

PROS. MORALES: And what were they doing in the kitchen?
 MRS. DEBALUCOS: They were sitting at the table, Sir.

PROS. MORALES: While sitting at the table, what were they doing?
 MRS. DEBALUCOS: They were watching the visitor was eating.

PROS. MORALES: Who was that visitor who was eating?
 MRS. DEBALUCOS: BONIFACIO PINONGCOS.

x x x x

PROS. MORALES: x x x [W]as there anyone who entered in the kitchen?

x x x x

MRS. DEBALUCOS: There was.

- PROS. MORALES: Who was that person if you can still remember?
MRS. DEBALUCOS: DODOY YBAÑEZ, his name is SANDE.
- PROS. MORALES: The person who entered the kitchen as you said named DODOY YBAÑEZ, what is his relation to the accused in this case whom you pointed out?
MRS. DEBALUCOS: He shot BONIFACIO once from behind when the latter was eating, Sir.
- PROS. MORALES: If that person who shot BONIFACIO PINONGCOS from behind when the latter was eating is in Court right now, would you be able to point him out to the Court?
MRS. DEBALUCOS: Yes. (Witness pointed to the man wearing yellow t-shirt as accused SANDE YBAÑEZ. Who when questioned gave his name as SANDE YBAÑEZ)
- PROS. MORALES: When you saw him shot BONIFACIO PINONGCOS once from behind, how far were you away from BONIFACIO PINONGCOS?
MRS. DEBALUCOS: (Witness pointed to the counsels' table as the distance from the witness stand, which is one meter.) And during that time it was very bright because the light is 100 watts.
- PROS. MORALES: How about the accused when he shot BONIFACIO PINONGCOS how far away was he from BONIFACIO PINONGCOS?
MRS. DEBALUCOS: Very near, it's about 2 steps only.
- PROS. MORALES: How far away were you from the accused when he shot BONIFACIO PINONGCOS?
MRS. DEBALUCOS: Quite near, very near, Sir.
- PROS. MORALES: And where were you facing at that time when the accused shot BONIFACIO PINONGCOS?
MRS. DEBALUCOS: I was watching DODOY YBAÑEZ, I was watching both of them and I felt nervous.
- x x x x
- PROS. MORALES: How long did the shooting take place after the accused entered the kitchen?
MRS. DEBALUCOS: It was immediate, Sir, when he entered and the person ... (witness demonstrated that the person who was then seating fell face down.)
- PROS. MORALES: Was there anything that the accused utter when he entered the kitchen and immediately as you said shot the victim?
- x x x x
- MRS. DEBALUCOS: None, he suddenly entered.
- PROS. MORALES: Did you notice what was the firearm used by the accused or can you describe, if you can, the

firearm that the accused used in shooting the victim?

MRS. DEBALUCOS: It was the big one he used in shooting the victim, Sir, and after that he pulled out a small pistol from the right side of the hip, that was what I saw.

x x x x

PROS. MORALES: By the way, where was the victim hit when the accused shot him from behind?

MRS. DEBALUCOS: (Witness demonstrated that the victim was hit at the head.)

PROS. MORALES: After that one shot which thereafter you said the victim fell face forward, what did the accused do?

MRS. DEBALUCOS: He immediately left, I do not know where he went.

PROS. MORALES: By the way, you mentioned earlier that the accused also took something on his hip, can you please elaborate on that what was that?

MRS. DEBALUCOS: A small black pistol and then he immediately left.

PROS. MORALES: From whom did he get that small pistol?

MRS. DEBALUCOS: It was taken from the side of the hip of the victim BONIFACIO PINONGCOS, Sir, after the victim was hit.

PROS. MORALES: Now, after taking the gun of BONIFACIO PINONGCOS, what was the next thing that the accused do?

MRS. DEBALUCOS: He immediately left taking it with him.

x x x x

PROS. MORALES: As a result of that shooting of the victim by the accused, do you know what happened to the victim, BONIFACIO PINONGCOS?

MRS. DEBALUCOS: He died.¹⁹

Alicia's testimony was corroborated on all material points by Ricardo.²⁰

¹⁹ TSN, August 25, 2010, pp. 4-13, records, Vol.2, pp. 39-48.

²⁰ TSN, November 21, 2012, pp. 4-5, records, Vol. 2, pp. 102-103. The pertinent portion of Ricardo's testimony, reads:

Pros. H. Morales:	Under what circumstance did PO1 Bonifacio Pinongcos die, if you have any knowledge?
Ricardo L. Debalucos:	I was there. Sir.
Pros. H. Morales:	What was the circumstance of why he died?
Ricardo L. Debalucos:	He was shot.
Pros. H. Morales:	Who shot him?
Ricardo L. Debalucos:	Sande Ybañez, witness is pointing to the accused.
Pros. H. Morales:	x x x how far were you from the accused when he shot PO1 Bonifacio Pinongcos?
Ricardo L. Debalucos:	Just beside him. Sir.
Pros. H. Morales:	And where did the shooting happen?
Ricardo L. Debalucos:	In [sic] my table.
Pros. H. Morales:	Table of whose house?
Ricardo L. Debalucos:	In my house, Sir.
Pros. H. Morales:	Aside from you were there any other persons around at that time?
Ricardo L. Debalucos:	My wife, Sir.
Pros. H. Morales:	Who is your wife?

Nonetheless, Sande insists that Alicia and Ricardo's testimonies are inconsistent as to whether Sande took the service firearm from the victim's hip, and whether they knew that Bonifacio and Marvie had a prior dating relationship. These alleged inconsistencies are immaterial because these are not elements of the crime and do not detract from the credibility of the witnesses.²¹ Inconsistencies on minor details and collateral matters do not affect the veracity, substance or weight of the witness' testimony and do not necessarily render the testimony incredible. In fact, variance in minor details have the effect of bolstering, instead of diminishing, the witness' credibility because they discount the possibility of a rehearsed testimony. What is imperative is the witness' coherence in relating the principal elements of the crime, and the positive and categorical identification of the accused as the perpetrator.²²

Sande further maintains that the *corpus delicti* of the offense was not proven considering that the physician who issued the death certificate did not perform the autopsy, and that the gun used was not presented in evidence. These defenses must fail. Indeed, while the autopsy report of a medico legal expert in a murder case is preferably accepted to show the extent of the injuries of the victim, it is not the only competent evidence to prove the injuries and the fact of death.²³ It may be proved by the testimonies of credible witnesses.²⁴ In the same manner, the presentation of the weapon and bullets used can also be dispensed with so long as there are credible eyewitnesses to the shooting.²⁵

Ricardo L. Debalucos:	Alicia Debalucos, Sir.
x x x x	
Pros. H. Morales:	At about what time did this incident happened? [<i>sic</i>]
Ricardo L. Debalucos:	2:00 o'clock [<i>sic</i>] dawn more or less, Sir.
x x x x	
Pros. H. Morales:	You said that you saw the shooting, what part of the body of PO1 Bonifacio Pinongcos that was [<i>sic</i>] hit?
Ricardo L. Debalucos:	In the head, Sir.
Pros. H. Morales:	In front or at the back of the head?
Ricardo L. Debalucos:	At the back, Sir.
Pros. H. Morales:	How many times?
Ricardo L. Debalucos:	Only one, Sir.
Pros. H. Morales:	Immediately before the actual shooting was there any words uttered by the accused to the victim PO1 Bonifacio Pinongcos?
Ricardo L. Debalucos:	None, Sir.
Pros. H. Morales:	You said that the accused shot the victim at the back of the head, what position in relation to the accused did the accused approach the victim in order to shoot him?
Ricardo L. Debalucos:	In the door because the door was opened.
Pros. H. Morales:	Of your house?
Ricardo L. Debalucos:	Yes, Sir.
Pros. H. Morales:	What was the position of the victim when the accused shot him?
Ricardo L. Debalucos:	He was sitting, Sir.
x x x x	
Pros. H. Morales:	If the victim was sitting, what was his position in relation to the accused when the accused shoot him?
Ricardo L. Debalucos:	The accused was in [<i>sic</i>] positioned at the back of the victim.
Pros. H. Morales:	What is the distance between the accused and the victim when the accused shot the victim PO1 Bonifacio Pinongcos?
Ricardo L. Debalucos:	More or less one fathom, Sir.

²¹ See *People v. Ordon*, 818 Phil. 670, 678 (2017).

²² See *People v. Magallano, Jr.*, *supra* note 17, citing *People v. Nelmid*, 694 Phil. 529, 559 (2012).

²³ *People v. Quimzon*, 471 Phil. 182, 193 (2004).

²⁴ *Id.*

²⁵ See *People v. Pitulan*, G.R. No. 226486, January 22, 2020, citing *Lumanog v. People*, 644 Phil. 296 (2010).

Thus, the *corpus delicti* and the positive identification of Sande as the perpetrator of the crime are more than enough to sustain the conviction.

Corpus delicti is defined as the body, foundation, or substance of a crime.²⁶ It refers to the fact of commission of the crime, not to the physical body of the deceased.²⁷ The prosecution must prove that a certain result or fact has been established, *i.e.*, that a man has died, and that some person is criminally responsible for it. In murder cases, the *corpus delicti* is the fact of killing.²⁸ In *People v. Delim*,²⁹ we discussed that:

[C]orpus delicti includes two things: first, the objective; second, the subjective element of crimes. In homicide (by *dolo*) and in murder cases, the prosecution is burdened to prove: (a) the death of the party alleged to be dead; (b) that the death was produced by the criminal act of some other than the deceased and was not the result of accident, natural cause or suicide; and (c) that defendant committed the criminal act or was in some way criminally responsible for the act which produced the death.³⁰ To prove the felony of homicide or murder, there must be incontrovertible evidence, direct or circumstantial, that the victim was deliberately killed (with malice); in other words, that there was intent to kill. Such evidence may consist *inter alia* in the use of weapons by the malefactors, the nature, location and number of wounds sustained by the victim and the words uttered by the malefactors before, at the time or immediately after the killing of the victim. If the victim dies because of a deliberate act of the malefactor, intent to kill is conclusively presumed.³¹

Here, the prosecution sufficiently established the *corpus delicti* through physical evidence, corroborated by the eyewitnesses' account. The Certificate of Death showed the cause of Bonifacio's death as cardiopulmonary arrest secondary to a gunshot wound on the head.³² The identity of Sande as the shooter was also proven through the testimonies of Alicia and Ricardo. As eyewitnesses, they vividly recounted how Sande made his swift and sudden attack and fired at Bonifacio point blank. The intrusion's posthaste and unexpected nature, coupled with Bonifacio's position of having his back turned against Sande, facilitated the assailant's evil plan. Thereafter, Sande grasped for Bonifacio's service firearm, which was tucked in the latter's waist, and fled the scene. The confluence of the evidence and the testimonies of the witnesses fully substantiate the murder committed by Sande against Bonifacio.

As a last attempt to exculpate himself from criminal liability, Sande invokes self-defense, alleging that Bonifacio was about to pull his gun when Sande attacked him and wrestled for its possession. As an affirmative

²⁶ *People v. Peñaflores*, 766 Phil. 484, 498 (2015).

²⁷ *Id.*

²⁸ *See Id.*

²⁹ 444 Phil. 430 (2003).

³⁰ *Id.* at 450, citing Wharton, *Criminal Law*, Vol. 1, pp. 473-474, citing *Lovelady v. State*, 14 Tex. App. 545.

³¹ *Id.*

³² Records, Vol. 1, p. 331.

allegation, the burden shifted to Sande to prove by clear and convincing evidence, that there was unlawful aggression on the part of the victim, reasonable necessity of the means employed to prevent or repel the aggression, and lack of sufficient provocation on the part of the accused.³³ The defense, however, failed to discharge this burden. Unlawful aggression is an indispensable requisite of self-defense. While all the three elements must concur, self-defense relies on the proof of unlawful aggression on the part of the victim. There can be no complete or incomplete self-defense without prior unlawful and unprovoked attack by the victim.³⁴

In this case, the evidence clearly shows that there was no unlawful aggression on the part of the victim. Aggression presupposes that the person attacked must face a real threat to his life and the peril sought to be avoided is imminent and actual, not imaginary.³⁵ Without actual or imminent peril to one's life or limb, there is nothing to repel and there is no justification for taking the life or inflicting injuries on another,³⁶ as in this case. Both the CA and the RTC correctly rejected the plea of self-defense and found Sande's version of events specious, if not incredible. Sande's testimony is belied by the eyewitnesses who categorically testified that Bonifacio was eating in the kitchen with his back turned from the perpetrator when he was fatally shot. The shooting was sudden and was not attended by any physical assault coming from the victim.

To sustain a conviction for murder under Article 248 of the Revised Penal Code,³⁷ the prosecution must prove the following elements: (1) that a person was killed; (2) that the accused killed the victim; (3) that the killing was not parricide or infanticide; and (4) that the killing was attended by any of the qualifying circumstances under Article 248.³⁸ The qualifying circumstance of treachery is present when the offender commits any of the crimes against 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.³⁹ The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on his part. Two conditions must be

³³ REVISED PENAL CODE, Art. 11, par. 1.

³⁴ See *People v. Escobal*, 820 Phil. 92, 114 (2017); *Manaban v. Court of Appeals*, 527 Phil. 84, 98 (2006); and *People v. Gadia*, 418 Phil. 30, 48 (2001).

³⁵ *Manaban v. Court of Appeals*, *id.* at 104.

³⁶ *Id.*

³⁷ 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 temporal* in its maximum period, 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 street car or locomotive 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 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.

³⁸ See *People v. Magallano, Jr.*, *supra* note 17.

³⁹ REVISED PENAL CODE, Art. 14, par. 16.

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established by the prosecution, namely: (a) that at the time of attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means, method, or form of attack employed by him.⁴⁰

Here, the prosecution sufficiently established the presence of treachery as a qualifying circumstance. The records reveal that at the time of the shooting incident, Bonifacio was sitting at the kitchen in the company of Ricardo and Alicia. He was eating the food prepared by his hosts when Sande walked through an open door, approached Bonifacio, and fired a gun at the back of his head. With his back turned away from his assailant, Bonifacio was unable to mount a defense nor did he see the impending attack. Sande did not make his presence known nor spoke to forewarn the victim. As recounted by the eyewitnesses, Sande purposely entered the house and immediately shot Bonifacio in close range. In fine, the prosecution successfully proved that Sande deliberately adopted a treacherous mode of attack to ensure the accomplishment of killing his victim with minimal risk to his safety.

In *People v. Bugarin*,⁴¹ treachery was conclusively proved when the accused suddenly fired at the victim without reason or warning. The victim was shot in the back and in his left side, giving him no means of retaliation or escape, and without any risk to the accused. The Court similarly ruled in *People v. Estrada*⁴² that the killing was qualified by treachery because the accused suddenly came up from behind the unsuspecting victim, who was then buying cigarettes, and fatally shot him in the back. Treachery likewise attended the killing of the victim in *People v. Marmita, Jr.*,⁴³ who was first shot in the back and, lying prostrate on the ground, was shot again.

All told, we find that Sande H. Ybañez is guilty of murder. Applying Article 248 of the RPC, the CA and the RTC correctly imposed the penalty of *reclusion perpetua*. Anent the civil liabilities, the awards of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages are likewise affirmed.⁴⁴ Lastly, in line with current policy, the lower courts properly imposed interest at the legal rate of six percent (6%) *per annum* on all monetary awards for damages, from the date of finality of this Resolution until fully paid.⁴⁵

FOR THESE REASONS, the appeal is **DISMISSED**. The Court of Appeals-Cagayan de Oro City's Decision dated September 27, 2018 in CA-G.R. CR-HC No. 01690-MIN is **AFFIRMED**. The accused-appellant Sande H. Ybañez is found guilty of Murder under Article 248 of the Revised Penal Code, and is meted out the penalty of *reclusion perpetua*. The accused is also ordered to pay the heirs of the victim the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages,

⁴⁰ See *People v. Magallano, Jr.*, *supra* note 17, citing *People v. Abadies*, 436 Phil. 98 (2002).

⁴¹ 807 Phil. 588 (2017).

⁴² 440 Phil. 317 (2002).

⁴³ 259 Phil. 1213 (1989).

⁴⁴ *People v. Jugueta*, 783 Phil. 806 (2016).

⁴⁵ *People v. Ronquillo*, 818 Phil. 641 (2017).

and ₱50,000.00 as temperate damages. All awards for damages shall earn an interest rate of six percent (6%) *per annum* from finality of this Resolution until fully paid.

SO ORDERED." (Rosario, *J.*, on leave).

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

23 JUN 2021

P 4/22

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THE SUPERINTENDENT (reg)
San Ramon Prison and Penal Farm
Zamboanga City
Zamboanga del Norte

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 23
Molave, Zamboanga del Sur
(Crim. Case No. 2008-10-2081)

COURT OF APPEALS (reg)
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