

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERMANO ANTIPOLLO, BERNIE CABASAG, (AT LARGE), RICHARD ANTIPOLLO, (AT LARGE) AND EDJUL ANTIPOLLO, (AT LARGE) ACCUSED. HERMANO ANT...*G.R. No. 141135. July 04, 2002*

Ponente: PUNO, J.

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The accused-appellant, HERMANO ANTIPOLLO, and his co-accused Bernie Cabasag, Richard Antipollo and Edjul Antipollo were charged with Murder before the Regional Trial Court of Barili, Cebu, Branch 60.[1] The crime was allegedly committed as follows:[2]

“That on or about the 5[th] day of June, 1998, at 12:30 dawn, more or less, at Barangay Doldol, Municipality of Dumanjug, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot thrice one Aniceto Bantoy with the use of a firearm of unknown caliber, hitting the latter on the different parts of his body which caused his death.

CONTRARY TO LAW.”

When arraigned, Hermano Antipollo pled “not guilty.”[3] The others have remained at large. The trial of the accused-appellant ensued.

The prosecution evidence came chiefly from the accounts of Renante Lañojan and his mother, Gregoria Lañojan, brother-in-law and mother-in-law, respectively, of the victim, Aniceto Bantoy.

It appears that in the evening of June 4, 1998, Aniceto Bantoy, Gregoria Lañojan, and Renante Lañojan, attended the novena to commemorate the fiesta of barangay Doldol, Dumanjug, Cebu. After the novena, they trekked toward the house of Gregoria Lañojan. On their way, they stopped at the barangay hall to rest. It was already 12:30 a.m. of June 5, 1998.

At that time, five (5) men were drinking liquor at a store, about six (6) or seven (7) meters away from the barangay hall. The group was composed of the accused-appellant, his co-accused and John Doe. Gregoria and Renante Lañojan personally knew the accused-appellant and his co-accused.[4] Someone from the group asked the victim and Renante to drink with them. The victim and Renante approached them and declined the offer. Thereafter, Jacinto[5] Cabasag arrived and hugged the victim. He also told the victim not to go home because they would drink Tanduay Rhum. The victim, who was just visiting his in-laws for the fiesta, freed himself from the hold of Jacinto Cabasag as he was a stranger to him. The accused-appellant and his companions then walked toward a road leading downhill, about four (4) or five (5) meters away from the store.

The victim and his in-laws headed for home, passing through the same route taken by the accused-appellant. For

some reason, the accused-appellant's group stopped walking. When the victim came closer to them, the accused-appellant suddenly drew his firearm and shot him. Renante, who was behind the victim, saw that the first shot hit the left portion of the latter's chest. The victim slumped on the ground but was still fired upon by the accused-appellant. The first bullet hit his thigh, the second missed its target. During the assault, the companions of the accused-appellant hurled stones at the victim and Renante. Thereafter, they fled.[6]

Gregoria Lañojan managed to run to their house in Doldol, more or less, 700 meters away from the crime scene. She immediately reported to her daughter, Flora Bantoy, the tragic fate of the latter's husband. They rushed back to the crime scene. With the help of some relatives, Flora was able to bring the victim to Barili District Hospital, but to no avail. He was pronounced dead on arrival. He was 25 years old.[7]

Municipal Health Officer Octavio Ortiz conducted an autopsy on the body of the victim. His postmortem report[8] showed the following findings:

“FINDINGS:

A. Gunshot wound No. 1 – Entrance is located at the left chest wall, 1 cm. long, 1 cm. wide, 4 cms. from the midline, 8 cms. from the nipple, 17 cms. below the clavicle, 17 cms. from the lateral border. Powder burns seen at the edge of the wound. Stomach and liver were perforated.... No exit wound is noted.

B. Gunshot wound No. 2 – located at the inguinal area, 1 cm. long, 1 cm wide, 7 cms. from the midline, 7 cms. below the inguinal bone, 10 cms. from the lateral border. Powder burns seen at the edge of the wound. Thigh muscles were perforated. No exit wound was noted.

CAUSE OF DEATH

1. Irreversible circulatory collapse due to massive hemorrhage due to gunshot wound hitting the stomach and liver.”

The defense was a mere denial.

The accused-appellant testified that on June 4, 1996, he went to barangay Doldol to play billiards with his nephews, namely, accused Richard Antipolo, Bernie Cabasag and Edjul Antipolo. They started playing at about 6:30 p.m. After the game, they went to a store near the barangay hall and had a drinking spree. There were other people in the vicinity, some were drinking liquor while others were just buying some stuff from the store.

At past midnight, there was an altercation among a group of drinkers in the vicinity. Jacinto Cabasag arrived and pacified the victim by embracing the latter. All of a sudden, there were three (3) bursts of gunfire. The accused-appellant and his companions took cover and ran. He went straight to his mother's house in barangay Pancil. The following day, he heard the news that somebody was killed in the shooting incident.

A few days later, the accused-appellant went to Mandaue to work. He learned that he was an accused in the killing of the victim when he was arrested on September 21, 1998. On cross-examination, he declared that before the gunshots, he saw the victim shaking the hands of the other group of people who were engaged in the drinking spree.

Defense witness Renato Escoreal, a resident of barangay Maigang, testified that he engaged in a drinking spree with his barkada at 12:30 a.m. of June 5, 1996 near the area where the group of the accused-appellant was also drinking. The victim allegedly went wild due to drunkenness and so Jacinto Cabasag restrained him. After the victim freed himself from Jacinto Cabasag's hold, gunshots rang out. The accused-appellant's group scampered. Escoreal said he did not see who shot the victim.

After the trial, the Regional Trial Court of Barili, Cebu, found the accused-appellant guilty of the crime charged. It held:[9]

“The defense of denial is just the same as alibi. It is a weak defense that can easily be overturned by positive identification. In the case at bench, the accused was positively identified by the eyewitnesses of the prosecution who testified in a candid, straightforward and spontaneous manner.

There is no showing that the witnesses for the prosecution were motivated by revenge or ill-feeling. No reason for them to testify against the accused; they were just telling the truth.

JUDGMENT is therefore rendered declaring the accused, Hermano Antipolo, GUILTY of the crime of Murder and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay the heirs of the deceased the sum of P50,000.00 as indemnity.

SO ORDERED.”

Hence the appeal. The accused-appellant assigns these errors:

“I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF MURDER NOTWITHSTANDING THE ABSENCE OF COMPETENT AND SATISFACTORY EVIDENCE TO SUPPORT THE SAME.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF MURDER AND IMPOSING THE PENALTY OF RECLUSION PERPETUA DESPITE THE ABSENCE OF THE QUALIFYING CIRCUMSTANCE OF TREACHERY AND/OR EVIDENT PREMEDITATION TO QUALIFY THE CRIME TO MURDER.”

The appeal lacks merit.

The accused-appellant’s defense was a bare denial. Allegedly, he was at the crime scene, having a drinking spree with his co-accused while the victim was with another group. The victim went wild due to drunkenness and was then being pacified by Jacinto Cabasag. Thereafter, gunshots rang out. They dispersed. The next day, he learned that somebody got killed in the incident.

We are unconvinced by the accused-appellant’s story. His denial of complicity in the crime cannot prevail over the positive testimony of the prosecution witnesses.[10]

Eyewitness Renante Lañojan testified as follows:[11]

“Q: Who were the five (5) persons who stood up and went into the downhill portion?

A: Hermano Antipolo and his companions.

Q: Afterwards, what did you do when you saw them at the downhill portion?

A: We followed them and then we went home.

Q: Who were your companions?

A: Aniceto Bantoy.

Q: How about your mother, where was she?

A: She was a little bit behind.

Q: What happened when you and Aniceto Bantoy followed Hermano Antipolo?

A: When we came near to (sic) them, Hermano Antipolo pulled his firearm and fired to (sic) Aniceto Bantoy.

Q: Who fired the shot?

A: Hermano Antipolo.

Q: To whom?

A: To Aniceto Bantoy.

Q: Was Aniceto Bantoy hit?

A: He was hit on the left portion of his chest.

Q: What happened to Aniceto Bantoy.

A: He fell and he was shot again for two times.

Q: Who shot Aniceto Bantoy when he fell down?

A: Hermano Antipolo.

Q: Was he hit when he was shot again for two times?

A: He was hit on the thigh, but the second bullet missed.

Q: When Hermano Antipolo shot Aniceto Bantoy for the first time, where were his other companions, Bernie Cabasag, Richard Antipolo and Edjul Antipolo?

A: They were just around.

Q: What did they do, if any, when they were circling you?

A: They threw stones.

Q: To whom did they throw stones?

A: To us.

Q: Were you hit?

A: Yes, in the buttocks.

Q: How about Aniceto Bantoy?

A He was hit on his nipple.

Q: After Hermano Antipolo shot the fellow, Aniceto Bantoy, what happened next?

A: The five of them ran away.”

(emphases ours)

Gregoria Lañojan corroborated the essential points of the testimony of Renante Lañojan.[12]

The testimonies of Renante and Gregoria Lañojan deserve full faith and credit for there is no showing that they were improperly motivated to testify falsely against the accused-appellant. Even the accused-appellant declared he

could not think of any reason why the prosecution witnesses pointed to him as the assailant.[13]

Renante and Gregoria Lañojan are related to the victim. Considering their close relationship, their natural instinct would be to help bring the real culprit to justice. To blame an innocent man for the killing of the victim would serve them no purpose.

The information charged that treachery and evident premeditation attended the killing.

Evident premeditation requires proof of the following: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between the decision and the execution to allow the accused to reflect upon the consequences of his act.[14] The records show that the prosecution did not adduce any evidence to prove these elements. What was established was that the victim and his in-laws were just passing by at the place where the accused-appellant's group was drinking. They had a chance encounter. There is no evidence adduced on when and how the accused-appellant had planned the killing of the victim. Nor is there proof offered to show how much time had elapsed before the plan was executed. Absent all these, evident premeditation cannot be appreciated against the accused-appellant.[15]

However, treachery was sufficiently proven in the case at bar. Treachery or *alevosia* 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.[16]

In the case at bar, the attack against the victim was treacherous not only due to the suddenness of its execution, but also due to the deliberateness of the mode chosen. The records show that the victim had no inkling of the impending attack. He was just walking along the road leading downhill when the accused-appellant shot him. The victim had no opportunity to anticipate the imminence of his attack, nor was he in a position to defend himself or repel the aggression because he was unarmed. Moreover, he was shot on the chest, at close range, as evidenced by the powder burns found around the victim's gunshot wounds.[17] To ensure the success of his criminal design, the accused-appellant fired at the victim twice although the latter was already wounded and was helplessly sprawled on the ground. Undoubtedly, the accused-appellant deliberately and consciously adopted the means to ensure his criminal purpose without any risk to himself. The suddenness of the attack without the slightest provocation from the victim who was unarmed and had nary any opportunity to repel the aggression qualifies the crime with *alevosia*. [18]

Clearly, the accused-appellant is liable for the crime of murder as the killing was done with treachery. The penalty for the said crime under Article 248 of the Revised Penal Code, as amended, is reclusion perpetua to death. In the absence of any mitigating or aggravating circumstance, the lesser penalty of reclusion perpetua should be applied.[19]

We now come to the civil liability of the accused-appellant. The trial court correctly awarded the sum of fifty thousand pesos (P50,000.00) as civil indemnity to the heirs of the victim. In addition, however, the accused-appellant should pay them the amount of P50,000.00 as moral damages for their sufferings which resulted from the violent death of the victim.[20]

IN VIEW WHEREOF, the decision appealed from, finding the accused-appellant, HERMANO ANTIPOLLO, guilty beyond reasonable doubt of Murder in Criminal Case No. CEB-BRL-288, and sentencing him to suffer reclusion perpetua and to pay the legal heirs of the victim, ANICETO BANTOY, the amount of P50,000.00 as civil indemnity, is AFFIRMED. In addition, the accused-appellant is ordered to pay the amount of P50,000.00 as

moral damages. Costs against the accused-appellant.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, and Carpio, JJ., concur.

- [1] Docketed as Crim. Case No. CEB-BRL-288.
- [2] Information, dated August 31, 1998, Original Records, p. 1.
- [3] Certificate of Arraignment, Original Records, p. 26.
- [4] TSN, Gregoria Lañojan, November 18, 1998, pp. 2-3. TSN, Renante Lañojan, November 9, 1998, pp. 2-5.
- [5] Also referred to as Bernie Cabasag in some parts of the records.
- [6] TSN, Renante Lañojan, November 10, 1998, pp. 2-4; TSN, Renante Lañojan, November 9, 1998, pp. 4-5.
- [7] Exh. "A", Original Records, p. 11.
- [8] Exh. "B", Original Records, p. 10.
- [9] Decision, dated July 13, 1999, Original Records, p. 98.
- [10] People vs. Ellado, et al., G.R. No. 124686, March 5, 2001.
- [11] TSN, Renante Lañojan, November 4, 1998, pp. 4-5.
- [12] TSN, Gregoria Lañojan, November 18, 1998, pp. 3-5.
- [13] TSN, Hermano Antipolo, April 15, 1999, p. 7.
- [14] People vs. Panabang, G.R. No. 137514-15, January 16, 2002.
- [15] People vs. Herida, et al., G.R. No. 127158, March 5, 2001.
- [16] Article 14 (16), Revised Penal Code.
- [17] Exh. "B", Original Records, p. 10.
- [18] People vs. Apongan, 270 SCRA 713 (1997).
- [19] Article 63, Revised Penal Code.
- [20] People vs. Panado, 348 SCRA 679 (2000).

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