

[CR-H.C. No. 02667, July 30, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARNOLD PABLICO AND ALLAN TANGUERAN, ACCUSED: ARNOLD
PABLICO, ACCUSED-APPELLANT.**

Court of Appeals

Before this Court is an appeal from the Decision^[1] dated July 7, 2005 and Order^[2] dated February 9, 2006 of the Regional Trial Court, Fourth Judicial Region, Branch 49, Palawan and Puerto Princesa City in Criminal Case No. 15976 entitled "People of the Philippines, Plaintiff, versus Arnold Pablico and Allan Tangueran, Accused," the dispositive portions of which read:

Decision dated July 7, 2005-

"Premises considered, the Court finds accused Arnold Pablico guilty beyond reasonable doubt in the shooting of Renante Cabrestante in the afternoon of March 9, 2000 at Sitio Mabengeten, El Nido, Palawan which shooting resulted to the death of said Renante Cabrestante. For the crime of Murder for which he was found guilty beyond reasonable doubt, accused Arnold Pablico is hereby sentenced to suffer the penalty of Reclusion Perpetua and to pay by way of civil indemnity the heirs of Renante Cabrestante the amount of fifty thousand pesos (P50,000.00).

On the other hand, since there was no proof of conspiracy in the shooting of Renante Cabrestante, co-accused Allan Tangueran is acquitted of the crime of Murder for which he was charged as co-principal. Because of such acquittal, the Provincial Jail Warden is directed to immediately release Allan Tangueran from detention at the Provincial Jail.

On the other hand, it is directed that Arnold Pablico shall serve his penalty of Reclusion Perpetua at the Iwahig Prison and Penal Colony, Puerto Princesa City. Therefore, the Provincial Jail Warden shall immediately transfer and commit Arnold Pablico to the said colony.

SO ORDERED."

Order dated February 9, 2006-

"As the accused in his Motion for Reconsideration has not raised a new issue and considering the fact that the decision of the Court had amply discussed and cited the pertinent decisions of the Supreme Court the Motion For Reconsideration is denied as it is hereby denied.

SO ORDERED."

The facts are:

On June 19, 2000, an Information^[3] was filed against accused-appellant Arnold Pablico ("Pablico" for brevity) and Allan Tangueran ("Tangueran" for brevity) for the crime of Murder, the accusatory portion of which reads:

"That on or about the 9th day of March, 2000, at around 5:00 o'clock in the afternoon, at Sitio Mabengeten, Barangay Villapaz, in the Municipality of El Nido, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with treachery and evident premeditation, conspiring, confederating together and mutually confabulating with each other, with intent to kill, while both armed with homemade shotgun locally known as "pirit-pirit", did then and there willfully, unlawfully and feloniously shoot with their homemade shotgun one Renante Cabrestante, hitting him in vital parts of his body and inflicting upon him gunshot wound which was the direct and immediate cause of his death shortly thereafter.

Contrary to law."

On November 15, 2000 and December 15, 2000, accused-appellant Pablico and accused Tangueran, respectively, assisted by their counsel, pleaded^[4] not guilty to the crime charged.

During the pre-trial conference^[5] on January 10, 2001, the prosecution proposed the marking as exhibit "A" of the Certificate of Death, which attests to victim Renante Cabrestante's ("Cabrestante" for brevity) fact of death. The pre-trial conference was closed and terminated without any proposal on the part of the defense.

Thereafter, trial ensued.

The prosecution presented Rodel Villanueva ("Villanueva" for brevity), Oliver Cabrestante ("Oliver" for brevity) and Dr. Cesar Rivera ("Dr. Rivera" for brevity) as witnesses.

On the other hand, Daniel Bacaltos ("Bacaltos" for brevity), Luciano Angeles ("Angeles" for brevity), accused-appellant Pablico and accused Tangueran were presented as witnesses for the defense.

Villanueva testified⁶ that: victim Cabrestante was his brother-in-law; he usually saw accused-appellant Pablico and accused Tangueran in Poblacion and Sitio Mabengeten, respectively, located at Barangay Villapaz, El Nido, Palawan, for as far as he knows, the latter are residents of the said barangay; he did not usually see accused-appellant Pablico and accused Tangueran carrying firearms; Arcadio Cabrestante ("Arcadio" for brevity) is victim Cabrestante's father; on March 9, 2000, at around 2:30 o'clock up to 3:30 o'clock in the afternoon, he, victim Cabrestante and Oliver went to Sitio Mabengeten to haul lumber for the construction of victim Cabrestante's house; victim Cabrestante invited him to gather woods and he was unaware if a permit to cut and gather woods was secured from the proper authorities; Barangay Villapaz is about five (5) kilometers away from Sitio Mabengeten; the place where they were gathering woods could only be reached from Barangay Villapaz by walking for more than an hour; Barangay New Ibahay in El Nido, Palawan is about seven (7) kilometers away from Barangay Villapaz; a

person coming from Barangay New Ibahay has to pass through Barangay Villapaz in going to Sitio Mabengeten and arrives there after about three (3) hours; he, Oliver and victim Cabrestante returned to sitio Mabengeten at around 5:00 o'clock in the afternoon for their next haul of lumber; he, Oliver and victim Cabrestante placed the pieces of round timber on their shoulders and hauled them from the lower portion up to the flat portion of Sitio Mabengeten where they left their carabao and cart; accused-appellant Pablico and accused Tangueran arrived in Sitio Mabengeten at around 5:30 o'clock in the afternoon armed with homemade shotguns ("pirit-pirit"); he, Oliver and victim Cabrestante had no quarrel nor misunderstanding with accused-appellant Pablico and accused Tangueran; when asked by accused-appellant Pablico and accused Tangueran what they were doing, they responded that they were gathering the cut woods; since accused-appellant Pablico and accused Tangueran were not yet through gathering woods, victim Cabrestante bid them goodbye for darkness might catch them along their path, and they left accused-appellant Pablico and accused Tangueran; while they were walking one after another about eight (8) meters away from accused-appellant Pablico and accused Tangueran, three (3) successive shots were suddenly fired at them; while each of them was carrying a two-and-a-half (2 1/2)-meter long wood, he was walking ahead, followed by Oliver and victim Cabrestante was at the back; he did not actually see the person who fired the shot because he was focused on the direction in front of him; victim Cabrestante fell to the ground after being hit by the first shot; he and Oliver dropped the pieces of wood that they were carrying and they ran away towards the lower portion of the forest area; another two (2) shots followed, then he saw accused-appellant Pablico holding the shotgun in an aiming position (nakatutok), but he did not see the latter in the act of firing it; he could not think of any reason why accused-appellant Pablico would shoot victim Cabrestante; he had never seen a homemade shotgun prior to the incident, and it was Oliver who told him that the thing being carried by accused-appellant Pablico was a homemade shotgun; only he, Oliver, victim Cabrestante, accused-appellant Pablico and accused Tangueran were present at the scene of the incident and he was unaware of the presence of other persons at the scene of the incident; upon reaching Barangay Villapaz, he and Oliver informed Arcadio about the shooting incident; he, Arcadio and Oliver went to the scene of the incident at about 8:30 o'clock in the evening and found victim Cabrestante, who was still alive at that time, sprawled on the ground; they carried victim Cabrestante at a distance of about two (2) kilometers from the spot where he was found to the place where they left the carabao and the cart; victim Cabrestante was first taken to Kagawad Victor Lagrosa's house in Barangay Villapaz; while dressing the wounds and cleaning victim Cabrestante body, they discovered that the left buttock of victim Cabrestante was hit; on March 10, 2000, at 4:00 o'clock in the morning, victim Cabrestante was finally transferred to Arcadio's house; there was no available banca to transport him to Taytay who died at 10:00 o'clock in the morning without receiving any medical attention; the incident was reported to the Barangay Captain and the police; he presented himself to the Barangay Captain for investigation after the nine (9)-day wake of victim Cabrestante and his statement was relayed to the police.

Oliver corroborated Villanueva's testimony and testified^[7] further that: he is the brother of victim Cabrestante; on March 9, 2000, between 2:00 o'clock and 2:30 o'clock in the afternoon, he, Villanueva and victim Cabrestante began constructing the latter's house in Villapaz, El Nido, Palawan; sitio Mabengeten is a kilometer and a half away from Villapaz and it could be reached by walking fast within an hour; the Barangay Captain authorized them to gather round wood (anibong) for the said

construction; accused-appellant Publico inquired from him, Villanueva and victim Cabrestante why they were there in Sito Mabengeten; he saw accused-appellant Publico shoot victim Cabrestante with a "pirit-pirit" while the latter was bending to pick up the wood that he gathered; he saw "pirit-pirit" before when he was guarding edible birds nest at New Ibajay, but he neither fired one nor saw one being fired; a "pirit-pirit" is loaded with a shotgun ammunition; he was eight (8) meters away from accused-appellant Publico and less than an arm's length away from victim Cabrestante when the gunshots were fired, but he was not hit; he was about twenty (20) meters away when accused-appellant Publico and accused Tangueran fired two (2) shots; when questioned by the lower court, he stated that accused Tangueran was merely looking and pointing his gun at him and Villanueva; Villanueva left him at the scene of the incident to fetch Arcadio and he remained hiding until Villanueva returned with Arcadio who brought a flashlight at the scene of the incident at 8:00 o'clock in the evening; the place where he hid is fifty (50) meters away from the place where victim Cabrestante fell; he, Villanueva, Arcadio and victim Cabrestante arrived at Villapaz on March 10, 2000 at 2:00 o'clock in the morning; they also looked for a jeep to transport victim Cabrestante to Taytay, but there was none; they sought the help of a doctor, but the latter could not render proper medical attendance to save victim Cabrestante from death; victim Cabrestante sustained eight(8) wounds which were more or less two (2) inches away from each other on the left hip; Barangay Captain Perlito Sarmiento arrived at Arcadio's house and talked to victim Cabrestante; upon the invitation of the Barangay Captain, a doctor conducted an autopsy on victim Cabrestante's body at the barangay hall at the time it was about to be buried; Arcadio reported the incident to the police; and, he executed his affidavit before former Judge Palomar of El Nido only on April 3, 2000 because he first attended the funeral of victim Cabrestante who was buried on March 11, 2000.

Dr. Rivera testified^[8] that: Arcadio identified victim Cabrestante's body and supplied all the details during the autopsy; victim Cabrestante sustained sixteen (16) gunshot wounds and an abrasion; the said wounds produced by a gunshot coming from a homemade shotgun ("pirit-pirit"); the metallic part^[9] (lead) taken from victim Cabrestante's body was more of a shotgun pellet rather than a slug fired from a .38 caliber gun; the hollow point of a bullet of a .38 caliber gun is visible; the bullet could have hit the bone of victim Cabrestante's leg because of the deformity of the lead; the gun was fired from a distance of less than two (2) feet because of the presence of contusion, tattooing and powder burns; the left lateral thigh of the lower extremities sustained most of the sixteen (16) wounds; no injury was sustained from the torso up to the head; victim Cabrestante succumbed to hemorrhagic shock due to gunshot wounds or loss of blood on account of the delay in rendering immediate medical attendance; according to Arcadio, had victim Cabrestante been immediately taken to the hospital, he could have possibly survived; he could not tell which among the sixteen (16) wounds was fatal; probably, the assailant did not intend to kill victim Cabrestante but merely to scare and hurt the latter; and, victim Cabrestante's fall could have caused the abrasion.

For the defense, Bacaltos testified^[10] that: he is a resident of New Ibajay, El Nido, Palawan; the whole day of March 9, 2000, he, accused-appellant Publico, accused Tangueran, Angeles and Justiano Patanao ("Patanao" for brevity) gathered edible bird's nest at Staff Cliff, which is a kilometer and a half away from New Ibajay; they left the place on March 10, 2000 at 11:30 o'clock in the morning because they ran