

## THIRD DIVISION

[ G.R. No. 141135, July 04, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
HERMANO ANTIPOLO, BERNIE CABASAG, (AT LARGE), RICHARD  
ANTIPOLO, (AT LARGE) AND EDJUL ANTIPOLO, (AT LARGE)  
ACCUSED. HERMANO ANTIPOLO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

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

<sup>[2]</sup>

“That on or about the 5<sup>th</sup> 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 Antipolo pled “not guilty.”<sup>[3]</sup> 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.<sup>[4]</sup> 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<sup>[5]</sup> 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.<sup>[6]</sup>

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.<sup>[7]</sup>

Municipal Health Officer Octavio Ortiz conducted an autopsy on the body of the victim. His postmortem report<sup>[8]</sup> 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:<sup>[9]</sup>

"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.