

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENITO S. TABIJE ALIAS “BENNY,” DEFENDANT-APPELLANT.

G.R. No. L-36099. March 29, 1982

Ponente: ERICTA, J.

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ERICTA, J.:

For the killing of Crispin Ching on November 19, 1971 at Paoay, Ilocos Norte, Benito S. Tabije, Marcos M. Madis and Paulino P. Bagarino, were accused of Murder, allegedly attended by the circumstances of treachery, premeditation and abuse of superior strength.

On motion of the fiscal, the court dismissed the information with respect to Paulino Bagarino[1] and Marcos M. Madis.[2] Only Benito Tabije was tried. From the decision convicting Benito S. Tabije of Murder and sentencing him, among others, to life imprisonment, he now appeals to this Court.

The dramatis personae involved in this tragic incident are the appellant Benito S. Tabije, the deceased Crispin Ching, and the sisters, Anita and Lydia, both surnamed Bugarin. The Bugarin sisters are the first cousins of the appellant.

The deceased and Anita used to be sweethearts. They had planned to get married and in fact had applied for a marriage license in Paoay, Ilocos Norte. But the deceased was dissuaded from proceeding with the marriage plan by his elder sister, Teresita Ching.

The deceased himself sowed the seeds of the tragedy when he also courted Lydia, sister of Anita. Both Anita and Lydia became the sweethearts of the deceased Crispin Ching.

In the evening of November 19, 1971, the deceased Crispin Ching who resided at Laoag City went to Paoay, Ilocos Norte which is the residence of his two sweethearts. He had an appointment with Lydia Bugarin, Anita's sister, to see a movie in Paoay, Ilocos Norte.[3] As Crispin was waiting for Lydia Bugarin near the moviehouse, he met the appellant Benito S. Tabije, who was with Marcos Madis, Paulin Bagarino and Benjamin Lacambra. Sometime later, Eleodoro Oaman arrived at the moviehouse. Oaman had been ordered by the appellant to fetch a bolo for him (appellant). Upon the arrival of Oaman, the appellant took the bolo from him.[4]

When Lydia Bugarin did not show up for her appointment, the appellant suggested to his companions that they accompany Crispin Ching to the house of the Bugarins. They all agreed except Benjamin Lacambra who preferred to stay behind.[5]

The appellant wanted to bring Crispin Ching to the parents of the Bugarin sisters so that Ching would talk with the parents of Lydia and Anita about his intentions with the Bugarin sisters.[6]

When they reached the road leading to the house of the Bugarins, the appellant told Crispin Ching to go ahead. The latter refused, saying he was ashamed.[7]

The refusal of the deceased to proceed to the house of the Bugarins led to the fatal stabbing. The testimonies of

the prosecution and the defense conflict on how the stabbing happened.

The version of the prosecution is that when the appellant and the deceased were approaching the house of the Bugarins, the deceased hesitated and said, "No, I do not like to go, I am ashamed." [8] Without warning, the appellant boxed the abdomen of Crispin Ching. The latter asked, "Why do you do that brother-in-law?" Instead of replying, the appellant stabbed Crispin Ching in his abdomen. Crispin Ching placed both his hands over his wound. The appellant stabbed him for the second time. Crispin Ching pleaded, "Please, for-give me my brother-in-law." Then he slumped to the ground. The appellant then grabbed Ching and dumped him into a 2-meter deep canal. [9]

On the other hand, the defendant testified that when Crispin Ching refused to proceed to the house of the Bugarins, the appellant asked Ching three times why he did not like to go. But the deceased refused to answer. So the appellant "asked him further whether he (the deceased) was only fooling around with my cousins, because he first courted the sister of Lydia and then he is again courting Lydia and I wanted to know if he was fooling around with Lydia." [10]

The deceased allegedly answered, "You have no business in this matter because you never gave me money to spend for this purpose." Thereupon, the deceased allegedly boxed the appellant at the left breast. The appellant retaliated by boxing the deceased twice and "since he (Ching) challenged me (appellant) and wanted to fight me so I stabbed him twice, sir." [11]

The only issue raised by the appellant in this appeal is whether the crime is murder or homicide to which the defendant offered to plead guilty at the commencement of the trial. But the offer to plead guilty to a lesser offense was rejected by the fiscal who insisted that the crime committed was murder. [12]

More specifically, the task before Us is to determine whether or not treachery attended the commission of the offense. We agree with the trial judge that there was treachery.

According to Eleodoro Oaman, while they were on their way to the house of Anita Bugarin, Crispin Ching was walking with the appellant. There was no conversation between the two until they were near the house of the Bugarins when Crispin Ching said, "No, I do not like to go, I am ashamed." [13] Without warning, the appellant boxed the abdomen of Crispin Ching. The latter asked, "Why do you do that brother-in-law?" Instead of replying, the appellant stabbed him twice. Crispin Ching pleaded, "Please, forgive me, my brother-in-law." [14]

Crispin Ching did not anticipate the attack. It was completely unexpected on his part. The appellant and his group deluded Crispin Ching into believing that they were his friends. The appellant called him "brother-in-law." They offered to escort him to the house of the Bugarins. [15] Because of these manifestations of friendship and concern, Crispin Ching was lulled into a false sense of security. Little did he know the fate that the appellant, his professed "brother-in-law," had prepared for him.

When an assault is made with a deadly weapon upon an unarmed and unsuspecting victim who has given no immediate provocation for the attack, and under conditions which make it impossible for him to evade the attack, flee, or make defense, the act is properly qualified as treacherous; and the homicide resulting therefrom is murder. (People vs. Fabian Ulita, et al, 108 Phil. 730)

The suddenness of the appellants' attack on their unprepared victim, who had met them with a friendly greeting just before being assaulted, leaves no doubt that the culprits took measures to forestall any danger to themselves, thereby making their crime murder qualified by alevosia. (People vs. Narciso de Gracial, et al, 18 SCRA 197, 207)

The appellant had a strong motive to kill the deceased. He felt that the deceased was just trifling with his two

cousins.

Thus, when the deceased refused to proceed to the house of the Bugarins, the appellant demanded from the deceased "whether he was only fooling around with my cousins because he first courted the sister of Lydia (referring to Anita) and then he is again courting Lydia and I wanted to know if he was fooling around with Lydia." [16] Also, in his written affidavit dated November 24, 1971, [17] the appellant stated that on the night of November 19, 1971, he (appellant) met "one male person (Crispin Ching) whom they informed me to be the sweetheart of my cousins who are sisters." [18] The appellant invited the deceased Crispin Ching to the house of the Bugarins in order to know the intentions of the deceased with respect to the two sisters. But when the deceased re-fused to go to the house of the Bugarins, the refusal angered the appellant. This can be seen from Question and Answer No. 23 of Exhibit "M" which reads as follows:

Q - What happened next when Crispin Ching did not like to go to the house of Lydia because he is afraid of the father of Lydia Bugarin?

A - I talked to him and I told him (Crispin Ching) that I will be the one to talk to the father of Lydia but still he did not like again I talked to him and told him that he is making a fool out of them and that he did not utter a word so that I reiterated what I told him that he is making a fool out of them but he did not utter a word and I asked him for the third time if he is making a fool out of my cousins and he answered me that he is afraid of the father of Lydia and that I was not able to sense (sic) myself for I unsheathed my sharp-pointed bolo inside my pocket and I stabbed him twice.

While motive is not necessary for the conviction of a defendant who is positively identified, nevertheless, it may be helpful in determining which of two conflicting theories is to be believed. In the instant case, the evidence for the prosecution tends to establish murder. On the other hand, the evidence for the defense tends to establish only homicide. The presence of a strong motive on the part of the appellant to kill the deceased makes the story of the prosecution that the crime was committed with treachery more credible.

On the other hand, the claim of the appellant that the deceased boxed him first lacks merit. In his statement found in Question and Answer No. 23 of Exhibit "M", the appellant stated, "I asked him (deceased) for the third time if he is making a fool out of my cousins and he answered me that he is afraid of the father of Lydia and that I was not able to sense (sic) myself for I unsheathed my sharp-pointed bolo inside my pocket and I stabbed him twice." In his affidavit (Exh. "M"), the appellant never mentioned the fact that the deceased boxed him first.

In another affidavit (Exh. "N"), the appellant reiterated the aforementioned statement when he said, "And because I told him again, maybe you are fooling them and because he did not answer, I was not able to hold myself and I drew the knife from my pocket and thrust it twice at him." There is nothing also in Exh. "N" wherein the appellant stated that the deceased boxed him first.

The crime committed is murder with the qualifying circumstance of treachery, with neither aggravating or mitigating circumstances attending the commission of the offense.

WHEREFORE, the decision of the lower court being in accordance with the facts and the law of the case, We hereby affirm the same. With costs.

Barredo, (Chairman), Aquino, Concepcion, Jr., De Castro, and Escolin, JJ., concur. Abad Santos, J., on official leave.

[1] p. 22, Record.

[2] p. 35, Record.

- [3] pp. 89-91, tsn, August 5, 1972.
- [4] pp. 23-26, tsn, March 23, 1972; pp. 89-90, 98, tsn, August 5, 1972.
- [5] pp. 26-27, tsn, March 23, 1972; pp. 91-94, tsn, August 5, 1972
- [6] pp. 92-93, tsn, id.
- [7] pp. 45-46, tsn, April 13, 1972.
- [8] pp. 45-46, tsn, id.
- [9] pp. 29-31, 34-35, tsn, March 23, 1972.
- [10] p. 96, tsn, August 5, 1972.
- [11] pp. 95-97, tsn, August 5, 1972.
- [12] pp. 2-3, tsn, March 23, 1972.
- [13] pp. 45-46, tsn April 13, 1972.
- [14] pp. 29-31, March 23, 1972, tsn.
- [15] pp. 26-27, tsn, March 23, 1972.
- [16] p. 96, tsn, August 5, 1972.
- [17] Exh. "M", pp. 72-74, Record.
- [18] Question and Answer No. 13, Exh. "M".

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