

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LOPE TABIAN Y PANTI ALIAS “ARMANDO” AND BONIFACIO PANGANIBAN ALIAS “BENNY” ALIAS “BEN” (AT LARGE), DEFENDANTS, LOPE TABIAN...

G.R. No. L-30917. February 14, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an automatic review of a decision of the defunct Circuit Criminal Court, 7th Judicial District, at Pasig, Rizal with the following dispositive portion:

"SA GAYONG DAHILAN ay napatunayan ng hukuman na si LOPE TABIAN Y PANTI ay NAGKASALA, ng walang pag-aalinlangan, sa salang Sadyang Pagpatay ayon sa sakdal, alinsunod sa Artikulo 248 ng Iniwastong Kodigo Penal, at siya ay hinahatulan ng kaparusahang KAMATAYAN; at pagbabayaran niya ang mga naiwan ng nasawi ng halagang Labindalawang Libong (P12,000.00) Piso; at pagbabayaran din niya ang mga nagugol sa usaping ito."

The information which was filed in CCC-VII-151-Q.C. reads as follows:

"The undersigned Assistant City Fiscal accuses BONIFACIO PANGANIBAN @ "BENNY" @ "BEN" and LOPE TABIAN y PANTI @ "ARMANDO" of the crime of Murder, committed as follows:

"That on or about the 26th day of March, 1969, in Quezon City, Philippines, the above-named accused, with intent to kill, without any justifiable cause, qualified by treachery and evident premeditation, conspiring with, confederating together and mutually helping one another, did then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence upon one ROLANDO MONFORTE y MORCOSO by then and there stabbing him on the different parts of his body with a sharp, pointed bladed weapon while the latter was asleep, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said ROLANDO MONFORTE in such amount as may be awarded to them under the provisions of the Civil Code."

The authorities were unable to arrest Bonifacio Panganiban so only Lope Tabian was brought to trial.

The version of the prosecution as stated in the People's brief is as follows:

"About 2:30 a.m. of March 26, 1969, Pablo Mendoza, then driving a Deltan taxi (No. 9678), picked up Bonifacio Panganiban and Fidel Atienza at the corner of Rotonda Lealtad and Matimyas Streets. The taxi after moving 20 meters stopped in front of the Matimyas Bakery where Lope Tabian boarded it (pp. 17, 18, 24, t.s.n., June 19, 1969). The three passengers instructed Mendoza to proceed to España Extension (now E. Rodriguez Sr., St.) (p. 18, id). Upon reaching the place in front of the Ysmael Steel Compound, the passengers told the driver to make a "U-turn" and thereafter was asked to stop in front of the Esso gas station, near the corner of E. Rodriguez St. and Araneta Avenue (pp. 18, 19, id). Lope Tabian first alighted, instructing the taxi driver to wait (pp. 19, 20, id). The taxi moved about 30 yards ahead and parked past the Ablaza Building in a

dark part of España Extension (p. 20, id). Panganiban also alighted and left Atienza inside the vehicle (id).

"Panganiban joined Tabian at the Esso gas station. Both crossed España Extension towards the Shell gas station which is just opposite the Esso gas station (pp. 25, 32, 33, id). At the Shell gas station, Panganiban bought cigarettes at the canteen while Tabian went to a parked Fiat jeep and observed the surroundings (pp. 27, 33, 38, id). Sleeping inside the Fiat jeep was the victim, Rolando Monforte, (id). Tabian went inside the Fiat jeep; moments later he alighted and fled towards the Deltan taxi parked near the Ablaza Building (pp. 27-28, 40, id). He was seen carrying an icepick by Irog Mercado, a 14-year old taxi washer, from across the Esso gas station (pp. 25, 28, 39, 40, id). Panganiban who was standing in front of the canteen at the Shell gas station about 10 meters from the Fiat jeep, followed Tabian running towards the taxi (pp. 28, 29, id). The taxi then immediately sped away. Panganiban and Tabian alighted at Calabas Road, near the Balic-Balic Church, while Fidel Atienza proceeded to Las Piñas, Rizal (p. 22, id).

"In the meantime, the victim, Rolando Monforte, managed to get out of the jeep and shouted, "sinaksak ako, sinaksak ako" (pp. 30, 31, id). Blood oozed from his chest and he was rushed to a hospital where he died (pp. 31, 38, id; Exh. "D", p. 54, rec.).

"The victim's body was examined by Dr. Ernesto B. Jimenez, NBI Medico-Legal Officer, and his examination is reflected in Necropsy Report No. N-69-399, stating that the victim suffered the following injuries:

"Pallor of lips and nailbeds. Stab wounds:

(1) Chest, anterior aspect, left side, 4.5 cms. to the left anterior median line, at the level of the 3rd intercostal space, spindle in shape, 1.5 cm. in length, long axis oriented horizontally, medial extremity contused, lateral extremity sharp, edges clean-cut, gaping, directed backward, medially and slightly downward, involving skin and subcutaneous tissues, incising thru 3rd intercostal space, left side, perforating along its tract lung, upper lobe, heart, right ventricle, with an approximate depth of 11.0 cms.

(2) Chest, anterior aspect, right side, 1.3 cms. to the right of anterior. Median line, at the level of 5th intercostal space, spindle in shape, 1.5 cms. in length, long axis oriented upward and laterally to the right, upper extremity contused, lower extremity sharp, edges clean-cut, and gaping, directed backward, downward and laterally to the right, involving along its tract, skin and subcutaneous tissues, sternum, lower 3rd at the level of the 5th intercostal space, pericardial sac, respiratory diaphragm, middle part, liver, middle lobe, with an approximate depth of 12.0 cms.

Hemothorax, left side, 800 cc.

Hemopericardium - 300 cc.

Hemoperitoneum - 250 cc.

Brain, pale.

Heart, firm, almost empty, with small amount of fluid blood.

Lungs; left lung collapse, right lung pale.

Liver and other visceral organs, pale.

Stomach, empty.

CAUSE OF DEATH:- Stab wounds of the chest, anterior aspect" (pp. 2-6, Exh. "A", p. 49, rec.).

The doctor further testified that the victim suffered two stab wounds; one at the left upper part of the chest, most fatal because it involved the heart (pp. 4-5, t.s.n., id; Exh. "B-2-A", p. 50, rec.) and the other at the right lower part of the chest, anterior aspect which involved the liver (pp. 4-5; Exh. "B-2-B", p. 50, rec.). External characteristics showed that both stab wounds were inflicted by a 'single-bladed stabbing instrument' (p. 5, id).

"On the very day of the incident, March 26, 1969, Detective Cesar Dalanon, Quezon City Police Department, repaired to the crime scene and interviewed the washboy, Irog Mercado, who gave the plate number of the taxi

used by the perpetrators some hours back (pp. 12, 13, id). Detective Dalanon located the taxi driver, Pablo Mendoza, who in turn accompanied him to Matimyas Street, particularly at Matimyas Bakery, where he (Mendoza) pointed to Lope Tabian as one of the passengers (p. 12, id). Mendoza also turned over to the police authorities an icepick which he recovered from the taxi after Lope Tabian and his companions had alighted (pp. 13, 14, id; Exh. "F").

"Lope Tabian was brought to the police station where he gave his statement (Exh. "C", p. 58, rec.) voluntarily to Detective Dalanon (pp. 10, 11, t.s.n., id). Irog Mercado and Pablo Mendoza also gave their respective statements (pp. 12, 13, t.s.n., id; Exhs. "D" and "E", respectively, pp. 54, 55, rec.).

Appellant Tabian was represented by Atty. Ramon C. Aquino, now a distinguished member of this Court who made the following assignment of errors:

I. The trial court erred in giving credence to the testimony of Irog T. Mercado that appellant Lope Tabian stabbed twice the victim, Rolando Monforte, with an ice pick.

II. The trial court erred in disregarding the finding of the Quezon City detectives and the testimonies of Fidel Atienza and appellant Tabian that the killer was Bonifacio Panganiban.

III. The trial court erred in not holding that appellant Tabian was only an accomplice.

IV. The trial court erred in its appreciation of the attending circumstances, in not appreciating the mitigating circumstance of lack of instruction and the circumstance analogous to plea of guilty in favor of appellant Tabian and in sentencing him to death."

The third assignment of error admits appellant's participation in the crime but downgrades it to that of a mere accomplice. The fundamental question, therefore, is whether appellant should be convicted as a principal or as an accomplice only.

We hold that appellant is guilty as a principal.

The claim of the appellant is that it was Panganiban who had a motive to kill Rolando Monforte; that it was Panganiban who struck fatal blows on the victim; and that he accompanied Panganiban as an "alalay" to help "if somebody will arrive." Thus appellants brief says:

"A grave miscarriage of justice was perpetrated by the trial court when it convicted of murder Lope Tabian (his correct surname is Fabian as may be seen from his signature on his statement, Exh. C, p. 53, Record). The prosecution did not prove any motive ("atraso") that would impel Fabian or Tabian to murder Rolando Monforte. At the time of the alleged killing, Tabian was not acquainted with the victim and harbored no grudge against him.

"The sole witness against Tabian was a fourteen-year old boy 'wash boy' who was not present at the killing because he was at the Esso gas station, while, the killing occurred inside a jeep in the Shell gas station across España Extension (now E. Rodriguez Street) at the corner of G. Araneta Boulevard, Quezon City.

"On the other hands, the actual killer, Bonifacio Panganiban, who is at large, was mauled three days before the killing by Rolando Monforte, the victim. It was Panganiban who had the motive ("atraso") for killing Monforte. The prosecution's evidence clearly pointed to him as the killer. Yet, the trial judge fastened the crime on Tabian who was a mere "alalay" or lookout, when the killing was perpetrated, and who, therefore, was at most an accomplice but, certainly, not a co-principal, much less the actual perpetrator of the murder.

"Hence, the lower court's judgment must be modified. Tabian should be convicted as a mere accomplice." (pp. 1-2.)

It is true that appellant had no personal motive to kill Rolando Monforte because it was Panganiban who was mauled by Rolando. But we cannot believe his claim that he was not armed with a weapon during the incident and that he did not stab Monforte.

It is to be noted that appellant admitted during the trial that three days prior to the incident he agreed to help Panganiban avenge the mauling administered to the latter. And pursuant to the agreement he went with Panganiban to look for the latter's assailant at the ungodly hour of 2:30 in the morning. That appellant was armed with an icepick and what he did on that occasion was described by Irog Mercado who had no reason to give false testimony. Thus, Mercado testified on direct examination as follows:

"DIRECT EXAMINATION

BY FISCAL MELENDRES

Q On March 26, 1969, were you already a washer?

A Yes, sir.

Q Where were you washing a taxi?

A At Esso.

Q What is this Esso?

A At gasoline station.

Q Where is this Esso?

A At Araneta Avenue.

Q The supposed gasoline station is just across the Shell Station?

A Yes, sir.

Q

At around two forty that early morning were you in that Esso Gasoline Station?

A Yes, sir.

Q What were you doing then?

A I was just standing there waiting for a taxi to be washed.

Q

While you were standing there, can you tell us if you witnessed anything unusual that happened?

A When I was standing there a taxi stopped.

Q Where did that taxi stop?

A In front of the gasoline station.

Q How far were you from that taxi?

A One (1) meter. (witness pointing to the Fiscal)

Q Did you see anybody inside that taxi that parked?

A Yes, sir.

Q More or less, how many were they?

A Three.

Q Excluding the driver?

A Yes, sir.

Q In other words, there were four of them?

A Yes, sir.

Q What else did you see?

A Two of them alighted.

Q

If any of these two persons who alighted, is in Court, will you be able to recognize him?

A Yes, sir.

Q Will you point to him?

A Yes, sir. (witness pointing to the accused, Lope Tabian)

Q And what did these two accused, who alighted, do?

A They went to the shell station.

Q Where is this shell station?

A Just opposite the Esso station.

Q How about the taxi where did it go?

A It proceeded towards and stopped in front of the Ablaza Building.

Q How far from the first place they stopped?

A I could just see the taxi.

Q

Do you know what happened with these two persons, who alighted in that Shell gasoline station?

A

One of them bought cigarette, and this Lope Tabian was there near the Fiat car.

Q What else? Was it a car or jeep?

A A Fiat jeep.

Q What was Lope Tabian doing near that Fiat jeep?

A He went up.

Q Was there anybody inside that Fiat jeep?

A There was nobody outside.

Q

How about inside the Fiat jeep, do you know if there was any person inside the jeep?

A There was.

Q Do you know that person?

A Yes, sir.

Q What is the name?

A Rolando Monforte.

Q What was Rolando Monforte doing?

A He was sleeping.

Q How did you know?

A I saw him there.

Q

Since when this Rolando Monforte was sleeping when Lope Tabian arrived and entered the jeep?

A He had been sleeping for four (4) hours already.

Q

What happened when you saw Lope Tabian entered this Fiat jeep where Rolando Monforte was sleeping?

A

I just saw that after Lope Tabian entered the Fiat jeep he alighted and ran.

Q Where did he ran?

A Towards the taxi.

Q What taxi?

A Deltan taxi.

Q Where was this taxi?

A Just passed Ablaza Building.

Q

What relation has that taxi in front of the Ablaza Building and the taxi that stopped?

A The same taxi.

Q How did Lope Tabian run towards that Deltan taxi?

A Very fast.

Q

Was he carrying anything, did you see if he was carrying anything while he was running?

A Yes sir, there was.

Q What was he carrying then?

A I saw there was an icepick.

Q

How far were you from Lope Tabian when you saw him running with an icepick?

A Very near because we were running after him.

Q And what was the condition of that place?

A It was dark.

Q What was dark?

A Near the place where the taxi was being parked.

Q

While Lope Tabian entered that Fiat jeep, how about his companion, where was he?

A He just followed Lope Tabian when the latter ran.

Q

What was that companion of Lope Tabian doing . . . While he was (Lope Tabian) was inside the jeep?

A Nothing, he was just standing in front of the store.

Q

How far was he standing from the Fiat jeep where Lope Tabian entered?

A Very near, sir. (witness pointing to a distance of ten meters)

COURT

Q

What about the place of the Esso gasoline station where the taxi was parked, was it well-lighted?

A Yes, sir.

Q Why?

A Because there were many lights.

Q You recalled having given a statement to Detective Dalanon?

A Yes, sir.

Q Is this your statement, marked Exhibit B?

A Yes, sir.

COURT

Q After Tabian boarded the taxi, what did he do?

A The taxi left.

Q What happened afterwards?

A No more, sir.

Q When the taxi left what did you see?

A I saw them in the taxi.

Q What happened to Rolando Monforte?

A He went down from the Fiat jeep and shouted.

Q What was he shouting?

A He was shouting, "I was being stabbed."

Q Who?

A He did not utter.

Q What did Rolando Monforte do?

A He boarded in a taxi.

Q Do you know where he went?

A No more, sir." (TSN, June 19, 1969, pp. 25-30.)

Appellant claims that it was Panganiban who killed Monforte with a balisong. Even assuming this to be true, the evidence indubitably shows that he conspired and cooperated with Panganiban in the latter's vendetta so that as a conspirator he must suffer all the penal consequences of the conspiracy.

The fourth assignment of error asserts that the aggravating circumstance of evident premeditation should not be appreciated against appellant. But why not? By his own admission he had conspired with Panganiban three days before the incident to avenge the mauling which the latter had suffered at the hands of the deceased. Three days is long enough to reflect on the deed and when it was done persistency of purpose was manifested.

The same assignment of error also asserts that appellant "is entitled to the mitigating circumstance of lack of instruction since he finished only the fourth grade (2 tsn July 8, 1969)." (Brief, pp. 20-21.) Suffice it to say that appellant is not lacking in instruction. He finished fourth grade and his literacy is demonstrated by the fact that he signed his sworn statement - Exhibit C. Besides, lack of instruction is not a mitigating circumstance in murder for man who is a rational being has always been forbidden to kill.

Appellant's testimony during the trial and his sworn statement do not support the claim that he is a person of low intelligence.

Finally, appellant claims that his confession that he participated in the commission of the crime as an "alalay" is analogous to a plea of guilty which should be mitigating. We reject this claim. We would be inclined to accept it if appellant was indeed a mere accomplice but since his guilt is that of a principal the claim has no basis.

Appellant is thus guilty of murder and with the attending circumstances the death penalty is warranted. However, for lack of the necessary votes to impose said penalty, the one next lower in degree is called for.

WHEREFORE, the judgment of the trial court is hereby affirmed but modified in respect of the principal penalty in that appellant shall suffer reclusion perpetua. Costs against appellant.

SO ORDERED.

Teehankee, Makasiar, Concepcion Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., in the result.

Aquino, J., no part.

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