

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BERNARDO ESPINOSA, ALIAS "BOY",
DEFENDANT-APPELLANT.**

G.R. No. L-34845. March 15, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

In the early afternoon of March 27, 1970, a Good Friday, at Sitio Banaba, Barrio Concordia, Municipality of Burgos, Pangasinan Province, the victim Mario Bonrostro was suddenly attacked and shot with an air rifle, causing various wounds on his head, face and neck, that resulted in his death at 12:05 a.m. on March 28, 1970, at the Pangasinan Provincial Hospital.[1]

As a result of the investigation conducted, a criminal complaint for murder, dated April 1, 1970, was filed against Bernardo Espinosa, alias "Boy" in the Municipal Court of Burgos, Pangasinan.[2]

An information dated October 9, 1970, was filed in the Court of First Instance of Pangasinan as Criminal Case No. 55-A, as follows:

"The undersigned Assistant Provincial Fiscal hereby accuses BERNARDO ESPINOSA alias "Boy" of the crime of MURDER committed as follows:

"That on or about March 27, 1970, in the municipality of Burgos, province of Pangasinan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously attack, wound and shot with an air rifle one MARIO BONROSTRO inflicting on the latter the following injuries, to wit:

1. Penetrating wound, 2 inches depth, left lower jaw, with severely damaged jugular vein;
2. Extensive hematoma, left parietal region, with marked congestion of the brain and petechial hemorrhage;
3. Stabbed wound 1.5 cms. cheek, left;
4. Extensive orbital hematoma, left;
5. Gunshot wound, subcutaneous, rt., occipital region;
6. Lacerated wound, sutured, upper and lower lips;
7. Fracture, lower jaw (wired);
8. Avulsion, teeth, incisors, anterior;
9. Penetrating wound, .5 cm., sutured left deltoid;
10. Abrasion, left deltoid;

11. Lacerated wound, 2 cm. rt., chin sutured;

12. Tracheotomy wound, sutured, 2.5 cms.

and as a result thereof, said Mario Bonrostro died to the damage and prejudice of his Heirs in the sum of P12,000.00.

"With the attendance of the qualifying circum-stance of alevosia and the generic aggravating cir-cumstance of known premeditation.

"CONTRARY TO LAW."[3]

After arraignment, plea of not guilty,[4] and trial, the lower court rendered a decision dated November 24, 1971, with dispositive portion as follows:

"WHEREFORE, in view of all the foregoing con-siderations, the Court finds and so holds the ac-cused Bernardo Espinosa, alias "Boy", guilty be-yond reasonable doubt of the crime of Murder as charged and he is therefore hereby sentenced to suffer the penalty of imprisonment for life (reclusion perpetua); to pay the heirs of the victim Mario Bonrostro the sum of P12,000.00 as indemnity and moral damages, plus the sun of P10,000.00 as exemplary damages and the costs.

"SO ORDERED."[5]

The accused appealed the decision to this Court on November 25, 1971.[6]

The evidence for the prosecution discloses that on March 27, 1970 at about past 10:00 a.m., the victim Mario Bonrostro, together with Ilustre Espinosa, Flaviano Balason and Romeo Carreon were on their way to Sitio Banaba, Barrio Concordia, Burgos, Pangasinan, to pick up "duhat". They were followed and joined later by the appellant Bernardo Espinosa, Ruben Balason and Borrromeo Necesito. After gathering "duhat", these seven persons proceeded to the house of Jacinto Bernal and Alejandra Balason, arriving there at past 11:00 a.m. The seven of them took their lunch at said house. After eating, Ruben Balason, Ilustre Espinosa, and Romeo Carreon rested in the sala. Bernardo Espinosa, Borrromeo Necesito and Flaviano Balason rested on the "balcon" (porch) of the house. Victim Mario Bonrostro was in the kitchen talking with some relatives.[7]

Romeo Carreon and Ilustre Espinosa heard appellant Bernardo Espinosa invite the victim Mario Bonrostro to go to the cockpit. Both Carreon and Ilustre Espinosa advised the victim Mario not to go. Carreon told Mario that "he might suffer the same fate as that of Santos Aquino who was killed in Uli, Dasol, Pangasinan." Appel-lant Bernardo Espinosa then stated - "We better go because if any-body will be touched, I am responsible to defend you." Victim Bonrostro replied - "You may have a plan against me." Appellant Espinosa added - "We better go so that we can catch up in the fight-ing of my cock in the cockpit."[8]

Appellant Bernardo Espinosa then started pumping air into his air rifle which he had with him since that morning. Appellant Espi-nosa was finally able to convince Mario to go with him and the two left the house on their way to the cockpit.[9]

Romeo Carreon had an apprehension or premonition that something dreadful might happen to Mario Bonrostro, so he decided to follow the two. Carreon's apprehension was based on his knowledge of an existing controversy over a parcel of land between the uncle of the victim Mario and the father of appellant Bernardo Espinosa. Car-reon's suspicions were confirmed.

Carreon saw the victim Mario Bonrostro walking ahead of appellant Espinosa. Suddenly, appellant Espinosa hit Mario at the left back side of his head with the butt of the air rifle. Mario turned around. Espinosa hit him several times more until he fell down. With Mario on the ground, Espinosa pounded the former's head with the barrel's

end of the rifle and shot Mario once on the head with the same air gun. Romeo Carreon hurriedly returned to the house of Bernal. As he looked back, Carreon could still see the victim Mario being hit by appellant Espinosa. Then Espinosa ran away from the scene. Carreon, upon reaching the house of Bernal, informed his companions about the incident he witnessed.[10]

When Carreon left the house of Bernal to follow the appellant and the victim surreptitiously, Alejandra Balason who lived in the same house, left to sell vegetables. Alejandra Balason earlier also saw the seven persons while they were taking their lunch. On her way while passing the road of Sitio Banaba, Barrio Concordia, Burgos, Alejandra Balason saw appellant Espinosa walking behind the victim Mario at a distance of about one meter. Suddenly, Espinosa hit Mario at the back of his head with the butt of an air rifle. Alejandra was about fifty meters from the two. She clearly saw the appellant hit the victim many times on the head and face. Mario fell down. Alejandra returned hurriedly to her house. She informed Ruben Balason, Ilustre Espinosa, Necesito, Pepe Balason and Romeo Carreon of the incident. She told them to help the victim Mario Bonrosto as he was being hit by appellant Espinosa.[11]

Romeo Carreon and the others proceeded to the scene, and saw the victim Mario lying prostrate on the ground with a bleeding face and with his head turned on its side. Rufino Balason called for the Barrio Captain. Barrio Captain Notario, Councilor Sixto Abella and other barrio councilmen arrived. The Barrio Captain ordered the victim to be brought to the hospital.[12]

The victim was rushed to Dr. Guiang at the Western Pangasinan Emergency Hospital. Dr. Guiang saw the victim in serious condition so he advised that the victim be brought to the Provincial Hospital at Dagupan City. The Victim expired at the latter hospital.[13]

Dr. Lucrecia Agbanlog Martinez performed an autopsy on the cadaver of the victim, with the following findings:

1. Penetrating wound, 2 inches depth, left lower jaw, with severely damaged jugular vein;
2. Extensive hematoma, left parietal region, with marked congestion of the brain and petechial hemorrhage;
3. Stabbed wound 1.5 cms. cheek, left, through and through;
4. Extensive orbital hematoma, left;
5. Gunshot wound, subcutaneous, right, occipital region;
6. Lacerated wound, sutured, upper and lower lips;
7. Fracture, lower jaw (wired);
8. Avulsion, teeth, incisors, anterior;
9. Penetrating wound, .5 cm. sutured left deltoid;
10. Abrasion, left deltoid;
11. Lacerated wound, 2 cm., right chin, sutured;
12. Tracheotomy wound, sutured, 2.5 cms.”[14]

Dr. Martinez opined that wound No. 1 was caused by a sharp instrument and proved fatal. Wound No. 2 was caused by a hard object and blunt instrument, and also caused the death of the victim due to profuse hemorrhage. Wounds Nos. 3, 6, 8, 9 and 10 were caused by a sharp instrument. Wounds Nos. 4, 7 and 11 were caused by blunt or dull instruments. Wound No. 5 was caused by a rifle. Death of the victim was due to shock, secondary to

hemorrhage.[15]

On April 4, 1970, Sgt. Iluminado Apostol of the 154th P.C. Company, together with P.C. companions and local policemen, went to the residence of the appellant at Barrio Uli, Dasol, Pangasinan, to serve a warrant of arrest for him. Failing to see appellant at his residence and upon information given by his mother, the law enforcers proceeded to Dasol and to Burgos, but again they failed to find him. Later, Sgt. Apostol was informed that appellant went to Zambales province.[16]

On June 15, 1970, more than 2 months after the issuance of the warrant for his arrest, appellant appeared before Municipal Judge Herminio Beltran of Infanta, then acting as Municipal Judge of Burgos, and posted a bail bond for his provisional release.[17]

The defense interposed a denial and an alibi. It is not disputed that in the morning of March 27, 1970, between 9:00 and 10:00 a.m., appellant was with the group of seven persons who went to gather "duhat" fruits. The victim Mario Bonrostro carried a bolo, while appellant Bernardo Espinosa had an air rifle with him. After gathering "duhat" they proceeded to the house of Jacinto Bernal at Banaba, Concordia, Burgos, Pangasinan. They ate lunch in said house, and then rested. Before eating, the group drunk "basi" (wine). Appellant Espinosa declined to drink because he was going to catch cows that afternoon at the place of farmer Leocadio Sawayway, upon instructions previously given by appellant's father.[18]

After the Bernal family had finished their eating, appellant asked permission to leave the group and he left the Bernal house for Leocadio Sawayway's place. He arrived at the latter place at 12:30 in the afternoon. Appellant, his father, and their tenant Leocadio Sawayway were able to catch their 3 cows at about 2:30 p.m. They rested in their hut and listened to the radio up to 5:00 p.m. as it was a Holy Friday.[19]

Appellant denied he was with the victim at the time of the crime. He denied having invited the victim to go to the cockpit on that afternoon. He claimed he was a friend of the victim.[20]

At about 2:00 p.m. on that same afternoon of March 27, 1970, defense witness Servillano Abella claimed he saw a person groaning on the road at Sitio Banaba, Concordia, where many people passed on that day as it was cockpit day. Abella proceeded to the nearest house, the Bernal residence. On his way, he met Alejandra Balason who was on her way to the cockpit to sell vegetables. Abella told Alejandra that somebody met an accident and that Abella was going to inform the Barrio Captain Notario of Concordia. Barrio Captain Notario arrived at the scene and saw the victim lying on his back, speechless and bleeding.[21]

The clear and convincing testimonies of Romeo Carreon and Alejandra Balason, both of whom had no known reason to falsely testify against appellant, that they saw appellant repeatedly hit and shoot with an air rifle the victim in the afternoon of March 27, 1970, cannot be overthrown by the weak alibi of the appellant.[22]

Appellant's defense to the effect that he was helping his father and their tenant Leocadio Sawayway catch cows at the time the crime was committed cannot stand against the positive identification of two credible witnesses that appellant was the one who suddenly attacked the victim with the use of an air rifle in that afternoon of March 27, 1970. Besides, for an alibi to be considered as a defense, it must be clearly shown that the accused could not be physically present at the scene of the crime. In this case, the alleged place where the appellant claimed he was to catch cows is a matter of 15 minutes walk from the scene of the crime.

While the evidence to establish evident premeditation is not convincing, the presence of treachery in the attack cannot be disputed. The two eyewitnesses both described the attack in clear terms. There can be no doubt that it was from behind, sudden and unexpected. The victim did not have any chance whatsoever to defend himself. Treachery qualifies the killing to murder.

WHEREFORE, the decision dated November 24, 1971, in Criminal Case No. 55-A, of the Court of First Instance of Pangasinan, Branch XI, is hereby AFFIRMED in all other respects, with costs against appellant.

SO ORDERED.

Barredo, (Chairman), Aquino, Abad Santos, De Castro, Ericta, and Escolin, JJ., concur.

[1] pp. 2-3, Appellee's Brief; Exh. "A", p. 2, List of Exhibits.

[2] p. 1, Original Record, Criminal Case No. 55-A, CFI Pangasinan, Branch XI, Alaminos, Pangasinan.

[3] p. 48, Original Record.

[4] p. 58, Id.

[5] p. 288, Id.

[6] p. 292, Id.

[7] pp. 2-7, t.s.n., Jan. 12, 1971.

[8] pp. 5-6, t.s.n., Feb. 2, 1971; pp. 7-8, t.s.n., Jan. 12, 1971.

[9] p. 9, t.s.n., Jan. 12, 1971.

[10] pp. 9-13, t.s.n., January 12, 1971.

[11] pp. 5-9, 18-20, t.s.n., Jan. 11, 1971.

[12] pp. 14-16, 24, t.s.n., Jan. 12, 1971.

[13] Exh. "F", p. 4, Original Record.

[14] Exh. "A", Folder of Exhibits.

[15] pp. 5-7, 9-11, t.s.n., Dec. 8, 1970.

[16] pp. 5-6, 7, 10, t.s.n., Feb. 3, 1971; Ex. "G", p. 9, Original Record.

[17] Exh "H". pp. 20-42, Original Record.

[18] pp. 2-7, t.s.n., Carreon; pp. 4-7, t.s.n., Ilustre Espinosa.

[19] pp. 2-3, Appellant's Brief.

[20] pp. 16, 19, 22, 23, t.s.n., Oct. 20, 1971.

[21] p. 3, Appellant's Brief.

[22] pp. 4-8, t.s.n., Jan. 11, 1971; pp. 11-13, t.s.n., Jan. 12, 1971.

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As a result of the investigation conducted, a criminal com-plaint for murder, dated April 1, 1970, was filed

against Bernardo Espinosa, alias "Boy" in the Municipal Court of Burgos, Pangasinan.[2]

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and as a result thereof, said Mario Bonrostro died to the damage and prejudice of his Heirs in the sum of P12,000.00.

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After the Bernal family had finished their eating, appellant asked permission to leave the group and he left the Bernal house for Leocadio Sawayway's place. He arrived at the latter place at 12:30 in the afternoon. Appellant,

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While the evidence to establish evident premeditation is not convincing, the presence of treachery in the attack cannot be disputed. The two eyewitnesses both described the attack in clear terms. There can be no doubt that it was from behind, sudden and unexpected. The victim did not have any chance whatsoever to defend himself. Treachery qualifies the killing to murder.

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SO ORDERED.

Barredo, (Chairman), Aquino, Abad Santos, De Castro, Ericeta, and Escolin, JJ., concur.

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- [15] pp. 5-7, 9-11, t.s.n., Dec. 8, 1970.
- [16] pp. 5-6, 7, 10, t.s.n., Feb. 3, 1971; Ex. "G", p. 9, Original Record.
- [17] Exh "H". pp. 20-42, Original Record.
- [18] pp. 2-7, t.s.n., Carreon; pp. 4-7, t.s.n., Ilustre Espinosa.
- [19] pp. 2-3, Appellant's Brief.
- [20] pp. 16, 19, 22, 23, t.s.n., Oct. 20, 1971.
- [21] p. 3, Appellant's Brief.
- [22] pp. 4-8, t.s.n., Jan. 11, 1971; pp. 11-13, t.s.n., Jan. 12, 1971.

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