PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAXIMO (DAGIT) RABANG, JR., ACCUSED-APPELLANT.

G.R. No. 105374. September 29, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an appeal taken by accused Maximo (Dagit) Rabang, Jr. from the decision of the Regional Trial Court, Branch 7, Aparri, Cagayan,[1] convicting him of murder, and sentencing him to reclusion perpetua, and to pay the heirs of the victim Floramante Talaro the amount of fifty thousand (P50,000.00) pesos as death compensation, without subsidiary imprisonment in case of insolvency, and to pay the costs.

On July 24, 1991, Provincial Prosecutor Alejandro A. Pulido of Tuguegarao, Cagayan, filed with the Regional Trial Court, Aparri, Cagayan, an information charging Maximo (Dagit) Rabang, Jr. with murder, committed as follows:

> "That on or about November 27, 1990, in the municipality of Buguey, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Maximo Rabang, Jr., alias Dagit, armed with a gun, with intent to kill, with evident premeditation and with treachery, did then and there willfully, unlawfully, and feloniously assault, attack and shoot one Floramante Talaro inflicting upon him wounds on his body which caused his death.
>
> "CONTRARY TO LAW."[2]

Upon arraignment on October 23, 1991, accused Maximo Rabang, Jr. entered a plea of not guilty.[3] Trial on the merits ensued. The prosecution presented three witnesses, namely, Benito Sindol, Dr. Fortunato Tacuboy, and Eduard Esteban. The defense, on the other hand, presented four witnesses, namely, Basilio Pascua, Efren Blancas, Domingo Cusit, and accused himself.

The facts are as follows:

On November 27, 1990, at the wake of Celestina Gertrudes Blancas in her residence located in Mala Weste, Buguey, Cagayan, there were thirty to fifty persons gathered condoling with the bereaved family. The front yard was covered with canvass tents and lighted with electric bulbs, and two tables for card players were set up, according to local custom.

At around 11:30 that evening, Floramante Talaro sat down at one of the card tables to play "41" with Ruben Talaro, Joel Amistad and Rodrigo de la Rosa.

While entering the gate of the Blancas residence, ten meters from where Floramante Talaro sat, Eduard Esteban saw accused Maximo Rabang pointing a long gun at the back of Talaro and firing, causing Talaro to fall down. As the gunshots rang, Esteban ran away because of fear.[4] People at the wake scampered away, though a few remained. When the air cleared, Talaro was lying prostrate on the ground, with his face upward near the card table in the yard. He sustained gunshot wounds (one entrance and six exit) died on the spot.

Before midnight, Benito Sindol, warden and police investigator, received report of the killing. He proceeded to the house of the Blancas to investigate. He interviewed Barangay Captain Domingo Cusit and other persons at the crime scene. Nobody claimed to have seen the assassin. Sindol then brought the body of victim Floramante Talaro to his house.[5]

The next day, police officers returned to the Blancas residence to conduct further investigation of the incident.

Dr. Fortunato Tacuboy, municipal health officer of Buguey, Cagayan performed a post mortem examination of the body of victim Talaro and issued a report, stating that the victim died of six gunshot wounds, all concentrated in the chest area where the bullets exited from the back.[6] The cause of death was "shock, internal and external hemorrhage, due to gunshot wounds."[7]

On November 29, 1990, or two days after the incident, Eduard Esteban reported the incident to the victim's mother, Mrs. Hilaria Talaro. Mrs. Talaro and Eduard Esteban went to the police to file a case against accused Maximo (Dagit) Rabang, Jr.[8] only on January 21, 1991, because the mother of the victim still had to search for other witnesses to corroborate the report of Esteban.

The accused contends that on November 27, 1990, at around 8:00 in the evening, he attended the wake of Celestina Blancas with Barangay Captain Domingo Cusit and his wife. Accused-appellant Maximo (Dagit) Rabang, Jr. was a barangay tanod and personal bodyguard of Barangay Captain Cusit.[9]

At around 11:00 in the evening, accused Rabang, Jr. left the wake with Cusit and his wife and went to the latter's house about thirty meters away.

Meanwhile, Barangay councilman Basilio Pascua heard gunfire while playing cards with other guests at the Blancas wake. Pascua stood up and saw that Floramante Talaro, seated behind him, had been shot. He interviewed the people within the area to find out who shot the victim, but nobody claimed to have seen the assassin.[10]

At around 12:00 midnight, Basilio Pascua went to the house of Barangay Captain Cusit to report the shooting incident. He found Cusit having coffee and conversing with accused Rabang, Jr.. Together, Pascua, Cusit, and Rabang, Jr. returned to the house of the Blancas. Cusit tried to find out who killed Floramante Talaro, but his efforts were unsuccessful. Police investigators arrived but likewise could not determine who killed the victim.[11]

Accused Rabang, Jr. admitted that the distance from the house of the Blancas to the house of the Cusits may be traveled in a few minutes. Barangay Captain Cusit is a brother-in-law of accused Rabang, Jr.[12]

The trial court gave credence to the testimonies of the prosecution's witnesses and convicted accused Maximo (Dagit) Rabang, Jr. On January 20, 1992, the trial court rendered decision,[13] the dispositive portion of which reads as follows:

> "WHEREFORE, based on the evidence adduced, this Court renders judgment:
>
> "1. Finding the accused MAXIMO RABANG, JR. a.k.a. Dagit, of Mala Weste, Buguey Cagayan, GUILTY beyond reasonable doubt of the offense of MURDER as defined and penalized under Art. 248 of the Revised Penal Code and hereby sentences him to suffer an imprisonment of RECLUSION PERPETUA, together with the accessory penalties provided therefor by the law;
>
> "2. Ordering the accused to pay the heirs of the victim Floramante Talaro the amount of P50,000.00 as death compensation, without subsidiary imprisonment in case of insolvency.
>
> "3. Further ordering the accused to pay the costs.
> "SO ORDERED.

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"Aparri, Cagayan, January 20, 1992.

"(s/t) ANTONINO A. AQUILIZAN

"Judge"[14]

Hence, this appeal.[15]

Accused-appellant questions the credibility of prosecution witness Eduard Esteban, who positively identified him as the assassin. Accused-appellant also assails the trial court's finding that treachery qualified the killing to murder. He interposes the defense of alibi.

In his appellant's brief, Maximo (Dagit) Rabang, Jr. alleged that prosecution witness Eduard Esteban was a paid witness, whose testimony was rehearsed and replete with inconsistencies.

We do not agree. The trial court was in the best position to evaluate the credibility of the witnesses presented before it for it had the opportunity to observe the witnesses' deportment on the stand and the manner in which they gave their testimonies. Thus, in the absence of showing that serious and substantial errors were committed by the lower court in the appraisal of the evidence before it, the trial judge's assessment of the credibility of the witnesses is accorded great weight and respect.[16]

The trial court noted that the inconsistencies cited by accused-appellant were minor.

The Court notes that it was only Esteban who stepped forward to testify as to the events that transpired on the night of November 27, 1990, despite the fact that there were numerous persons within the vicinity where the crime had been committed. However, the testimony of a single witness, if positive and credible, is sufficient to convict accused-appellant, even on a murder charge.[17]

Consequently, the testimony of sole eyewitness Eduard Esteban is enough to prove that accused-appellant Maximo (Dagit) Rabang, Jr. killed Floramante Talaro. Esteban identified the accused as the assassin in the midst of a well-lighted scene. He was familiar with accused-appellant, having known him for more than twenty years, a fact admitted by accused-appellant himself. Esteban narrated how he saw the incident from a distance of about ten meters from the victim. The trial court found his testimony credible. We find no reason to believe otherwise.

Moreover, the medical findings corroborated the testimony of Eduard Esteban. The medico-legal report[18] indicated that the gunshot wound of entrance was fired from the back of the victim and multiple pellets exited from the chest, as related by eyewitness Esteban.

Evidence further showed that Floramante Talaro was scheduled to testify in a pending murder charge against accused Rabang, Jr. in Criminal Case No. 10-295 filed with the Regional Trial Court, Branch 10, Aparri, Cagayan. As admitted by accused-appellant, the court dismissed the charges against him because of the death of Floramante Talaro, for lack of evidence.[19]

Accused-appellant hinges his defense on alibi. Alibi is inherently weak, for it is easy to contrive and concoct. For such a defense to prosper, it is not enough for the accused to prove that he was somewhere else when the crime occurred. He must also demonstrate that it was physically impossible for him to have been at the scene of the crime.[20]

In this case, accused-appellant admitted that the Blancas residence is only thirty meters from the house of Domingo Cusit, where he was at the time of the killing, which distance may be traveled in less than a minute. Thus, it was not physically impossible for accused-appellant to be at the crime scene.

Moreover, positive identification of an eyewitness prevails over the defense of alibi.[21] Thus,

accused-appellant's attempt to exculpate himself through alibi must fail.

As to the contention that the lower court erred in finding that treachery existed in the commission of the crime, we find the contention without merit. Treachery exists when the accused commits any of the crimes against persons employing means, methods or forms that tend directly and especially to insure its execution, with no risk to the offender that may arise from the defense which the offended party might make.[22] The essence of treachery is a swift and unexpected attack on an unsuspecting victim without the slightest provocation on his part.[23] In this case, the victim was sitting down, intently playing cards when accused crept from behind him and fired a shotgun behind his back, causing his instantaneous death. Such unprovoked and sudden assault by the accused-appellant displays an undoubtedly treacherous mode of killing the victim. Thus, the trial court correctly held the accused guilty of murder for the killing of the victim attended by the qualifying circumstance of treachery.

WHEREFORE, the Court hereby AFFIRMS the appealed decision of the Regional Trial Court, Branch 7, Aparri, Cagayan, convicting accused-appellant Maximo (Dagit) Rabang, Jr. of murder, defined and penalized under Article 248 of the Revised Penal Code, qualified by treachery, without further aggravating or mitigating circumstance, and sentencing him to reclusion perpetua, and to indemnify the heirs of the victim Floramante Talaro, in the amount of fifty thousand pesos (P50,000.00), without subsidiary imprisonment in case of insolvency. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In Criminal Case No. VII-691, Decision, dated January 20, 1992, Judge Antonino A. Aquilizan, presiding.

[2] Original Record, p. 39.

[3] See Certificate of Arraignment, dated October 23, 1991, Original Record, p. 57.

[4] Testimony of Eduard Esteban, TSN, January 9, 1992, pp. 18-29.

[5] TSN, January 7, 1992, pp. 2-10.

[6] TSN, January 9, 1992, pp. 2-10.

[7] See Certificate of Post Mortem Examination, Original Record, p. 3.

[8] TSN, January 9, 1992, pp. 27-28.

[9] Testimony of Rabang, Jr., TSN, January 16, 1992, pp. 22-26.

[10] TSN, January 15, 1992, pp. 8-9.

[11] TSN, January 15, 1992, pp. 11-15.

[12] Testimony of Rabang, Jr., TSN, January 16, 1992, pp. 34-35.

[13] Decision, promulgated on February 17, 1992, Original Record, pp. 81-99.

[14] Original Record, pp. 98-99.

[15] Notice of Appeal, Original Record, p. 106.

[16] People vs. Velasco, G. R. No. 125016, May 28, 1999; People vs. Bermudez, G. R. No. 129033, June 25,

1999.

[17] People vs. Lotoc, G. R. No. 132166, May 19, 1999; People vs. Benito, G. R. No. 128072, February 18, 1999, citing People vs. Tuvilla, 259 SCRA 1 (1996); People vs. Manalo, 229 SCRA 479 (1994); People vs. Batidor, G. R. No. 126027, February 18, 1999, citing People vs. Navarro, G. R. No. 129566, October 7, 1998.

[18] Exhibit “A”, Original Record, p. 3.

[19] See testimony of Rabang, Jr., TSN, January 16, 1992, pp. 36-37.

[20] People vs. Estepano, G. R. No. 126283, May 28, 1999.

[21] People vs. Balisoro, G. R. No. 124980, May 12, 1999; People vs. Diaz, 271 SCRA 504 (1997); People vs. Morales, 241 SCRA 267 (1995).

[22] Article 14 (16), Revised Penal Code; People vs. Adoviso, G. R. Nos. 116196-97, June 23, 1999.

[23] People vs. Hillado, G. R. No. 122838, May 24, 1999.

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