

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO RABANG Y CASTRO, DEFENDANT-APPELLANT.

G.R. No. 73403. July 23, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

We have before us on appeal the decision of the Regional Trial Court (RTC), Branch 41 of the National Capital Judicial Region, Manila, convicting appellant Eduardo Rabang y Castro of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim Henry Cortes y Morris the sums of P30,000.00 and P10,000.00 representing, respectively, the actual and moral damages.

On 26 December 1985, the Assistant Fiscal of Manila filed against the appellant an information for the crime of murder as follows:

"That on or about the 6th day of October 1984, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another, with intent to kill and by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of HENRY CORTEZ y MORRIS by then and there stabbing the latter at the back with a bladed weapon, thereby inflicting upon the said HENRY CORTEZ y MORRIS fatal stab wound which was the direct cause of his death.

Contrary to law."[1]

On arraignment, appellant pleaded not guilty to the crime charged. After trial, the trial court rendered a decision finding the appellant guilty of murder, attended by the qualifying circumstance of treachery. The dispositive portion of this decision reads:

"WHEREFORE, judgment is hereby rendered finding accused EDUARDO RABANG y CASTRO guilty beyond reasonable doubt [of] the crime of Murder and hereby sentences the said accused to suffer the penalty of Reclusion Perpetua and to indemnify the heirs of Henry Cortez y Morris the sum of Thirty Thousand Pesos (P30,000.00) for actual damage and the further sum of Ten Thousand Pesos (P10,000.00) for and by way of moral damage. Costs against accused.

SO ORDERED."[2]

The appellant raises the following errors in his brief:[3]

- 1) that the identification of the accused was "tailored-fit and legally defective and sham."
- 2) that the prosecution utterly failed to overcome the constitutional presumption of innocence enjoyed by the accused-appellant.

The facts as gathered from the records and the decision of the trial court may be summed up as follows:

Victor Boban, then 18 years of age and a cargador at the Asuncion Market, Tondo, Manila, testified that on 6

October 1984, at around 2:00 o'clock a.m. while he was standing near the corner of an alley of the Asuncion Market at Asuncion Street, waiting for the arrival of the bananas which he had to unload, he saw his friend, the victim Henry Cortez, also a cargador, leaning sideways against a cement wall facing him, from a distance of about one and one-half arms length. Since the place was well-lighted by two fluorescent lamps, being a public market, he clearly saw the face of the man who suddenly appeared from behind the victim.[4] This man, who turned out to be the appellant, stabbed the victim from behind with a fan knife at the base or nape of the neck. Without any warning, another man, a companion of the appellant, approached Victor and also tried to stab him with a knife.[5] Fortunately, he was able to evade the attack. He immediately fled the scene of the crime and ran towards the direction of Zaragoza Street, fearful of being pursued and further attacked. After sometime, however, he decided to return to the place of the attack and on his way back, he saw the appellant and several other unidentified persons including the one who tried to stab him, running away from the scene of the crime. When Victor reached the alley or pasillo, he saw many people gathered around and viewing the sprawled body of the victim. He came over and felt the pulse of the victim. He found him to be already dead. The next morning, he informed the police investigator at the Asuncion Market that he could identify to him the killer.[6] In December 1984, he was asked by the police investigators to come to the Homicide Section of the Western Police District (WPD). After executing a statement there (Exhibit E), he was asked by the police investigators to identify the assailant from a group of about ten (10) detention prisoners. He pointed out the appellant to the police as the person who had stabbed Henry Cortez.[7]

Patrolman Paterno Banawel, an investigator of the Homicide Section of the WPD testified that at about 3:15 o'clock in the morning of 6 October 1984, Patrolman Nituliano of Police Station 2 informed his office that a dead body was found near the corner of Asuncion Market and Asuncion Street, Tondo, Manila. He and Patrolman Borlongan immediately responded to the call. At the Asuncion Market, they came upon the body of the victim in Pasillo 1. On the victim's back were five (5) stab wounds. Later they talked to some of the people in the market and one of them, Ernesto Castillon, another cargador, informed them that the victim's name was Henry Suniega which information, however, turned out to be erroneous. Patrolman Banawel tried to question some of the vendors in the market but no one wanted to talk because of fear of reprisal.[8] But on 17 December 1984 at around 12:30 a.m., his office received a telephone call from an unidentified person informing that the suspected killer of Henry Cortez was roaming in the vicinity of Elcano Street and Recto Avenue, Tondo, Manila. Upon receipt of that call, his office immediately dispatched three (3) investigators, Patrolman Ansa, Patrolman Juanito Garcia and Sergeant Gaudencio Quibuyen. At around 1:30 a.m., the group returned with the appellant. In the meantime, Patrolman Banawel had gone back to the scene of the crime to look for eyewitnesses. This time he was informed by some people there that Efren Arroyo and Victor Boban had witnessed the slaying. This prompted him to request these two (2) persons to come to Banawel's office at the WPD. Upon being questioned, Boban told him that he would be able to identify the person who stabbed the victim. He brought Boban to a cell with about ten (10) detention prisoners, one of them being the appellant. Boban pointed out the appellant as the person he had seen stab Henry Cortez.[9]

On 6 October 1984, at around 12:30 p.m., Dr. Marcial Ceñido, medico legal officer of the WPD, conducted an autopsy on the body of the victim. The following were his postmortem findings:

"EXTERNAL INJURIES AND EXTENSIONS INTERNALLY:

1. Penetrating stab wound, right upper posterior thorax, 127 cm. from the heel, 0.5 cm. right of posterior midline, measuring 1.7 cm. x 0.4 cm. x 9.5 cm. in depth, directed obliquely forwards, slightly downwards and towards the lateral, thru the 2nd right posterior intercostal space, piercing the upper lobe of the right lung;
2. Non-penetrating stab wound, right middle posterior thorax, 118 cm. from the heel, 4.5 cm. right of posterior

midline, measuring 2 cm. upwards and towards the midline thru the muscle tissue;

3. Penetrating stab wound, left middle posterior thorax, 117 cm. from the heel, 3.7 cm. left posterior midline, measuring 1.8 cm. x 0.4 cm. x 10.5 cm. in depth, directed obliquely forwards, slightly upwards and towards the midline, thru the 7th left posterior intercostal space and piercing the thoracic aorta, esophagus, pericardium and pulmonary artery;

4. Non-penetrating stab wound, right posterior thoracic-lumbar region, 102 cm. from the heel, just right of posterior midline, measuring 2 cm. x 0.5 cm. x 9 cm. in depth, directed obliquely forwards, slightly downwards and towards the lateral coursing thru the muscles;

5. Non-penetrating stab wound, right posterior lumbar, 93 cm. from the heel, 1 cm. right of posterior midline, measuring 1 cm. x 0.4 cm. x 7 cm. in depth, directed obliquely forwards, slightly downwards the lateral coursing thru the muscle tissue;

6. Incised wound, superior border of the left shoulder measuring 0.3 cm. x 0.4 cm. cutting thru the subcutaneous tissue;

7. Deep abrasion, right zygomatic region measuring 1.5 cm. x 1 cm..

INTERNAL FINDINGS:

1. Stab wounds of the internal organs and tissues indicated under the internal extensions of the external wounds with generalized pallor;

2. Massive left hemothorax and with small amount of blood recovered from the right thoracic cavity;

3. Recovered about half of a glass of rice admixed with blood from the stomach and without alcoholic odor."[10]

In court, Dr. Cenido testified that the wounds found on the body of the victim were caused by only one single-edged pointed knife. He stated that the wounds were "consistent", all at the backside of the victim, possibly committed with the assailant behind the victim and that the victim could have been either standing up or lying down when stabbed. He identified wounds nos. 1 and 3 as the mortal wounds.

The errors assigned by appellant may be discussed together, considering that they are interrelated. Appellant contends basically that his identification as the culprit was "tailored-fit and legally defective and sham" since prosecution witness Victor Boban could not be expected to be able to register in his mind an accurate picture of what he saw or of events which might have taken place on the early morning hours of 6 October 1984, considering that those events were absolutely unforeseen and unexpected, and since that was the first time he had ever seen the appellant.

The Court cannot sustain appellant's claim in the light of Boban's positive identification of appellant as the person who had stabbed the victim. Boban testified as follows:

"Q On October 6, 1984 at about 2:00 o'clock in the early morning, do you remember where were you?

A Yes, sir.

Q Where were you at that precise time?

A I was standing at the corner of an alley and Asuncion St., sir.

x x x x x x x x

Q While you were on the place at the corner of an alley and Asuncion St., do you know of any unusual incident

that happened?

A Yes, sir.

Q What was the unusual incident that happened?

A While my friend was standing there, he was stabbed near the nape. (Witness pointing to a point at the base of the nape on his right side)

Q Who is that friend of yours which according to you was stabbed?

A Henry, sir.

Q Now, will you please demonstrate to the Court the position of your friend while he was stabbed?

A He was standing on his right side leaning on the cement wall.

Q Now, where did the person who stabbed Henry come from?

A From behind, sir.

Q When you said 'from behind', the assailant came from behind of Henry?

A Yes, sir.

Q What instrument did he use in stabbing Henry?

A A fan knife, sir.

Q Will you please look around inside the courtroom and please point to the Court the one who stabbed Henry.

A (Witness pointing to a man who when asked he gave his name as Eduardo Rabang).

x x x x x x x x

Q When Henry was stabbed by the accused herein in Asuncion Market, how far were you from him?

A About one and one-half arms length.

Q What was the condition of the place where the incident occurred? Was it dark or lighted?

A It's lighted, sir.

Q Why is it lighted?

A Because it's a market, sir.

Q Have you seen this accused before the stabbing incident?

A No, sir.

Q What makes you certain that he was the one who stabbed the victim?

A I saw his face and I remembered, sir.

Q What was his position in relation to you when he stabbed the victim?

A He was facing me, sir.[11]"

(Underscoring supplied)

From the aforequoted testimony, it is clear that witness Boban had full opportunity to see and observe the knifing

of Henry Cortez. The place was well-lighted at the time the slaying happened. The witness who was only about one and one-half arms length away from the victim, had seen the appellant approach the victim from behind and stab the latter with a fan knife at the base of the neck. Contrary to appellant's claim, the fact that he had seen appellant stab the victim once did not amount to an admission that the appellant could not have inflicted upon the victim the other stab wounds. Boban could not testify as to the other stab wounds since he immediately left the premises after the first stab wound was inflicted. In this regard he stated that:

“x x x x x x x x

Q After you were approached and stabbed by that man whom you just mentioned to the Court, what did you do?

A I ran away, sir.

Q Later on, after you ran away, what did you do?

A I ran towards the exit from the market, sir.

COURT:

Q Where did you go?

A Outside the market, sir.

FISCAL:

Q After running, what did you do next?

A When I was about to go back, I saw many people milling around the body of Henry, sir.

Q What did the people milling around do with your friend Henry?

A They were just looking at him, sir.

Q How about you – what did you do, if any?

A None, sir.

Q Do you know whether Henry was brought to the hospital?

A No, sir, because he was already dead.

x x x x x x x x”[12]

The testimony of a single witness, if credible and positive and if it satisfies the court beyond reasonable doubt, is sufficient to convict.[13] In the case of *People vs. Aboga*,[14] the Court ruled that the testimony of a prosecution witness who was only two (2) arms length away from the victim at the time of the crime and who had observed the killing by the light of a wick lamp inside the house, was credible. The fact that Boban did not witness the rest of the events did not in any way affect his credibility as a witness. There was no showing that that prosecution witness was prompted by any ill motive in testifying against the appellant. The absence of evidence of any improper motive impelling the principal prosecution witness sustains the conclusion that his testimony was worthy of full faith and credit.[15] In fact, the appellant conceded that he was not at all known to Victor Boban before the fatal morning of 6 October 1984.

It may also be recalled that the WPD medico-legal officer testified that the five (5) stab wounds had been inflicted by the same weapon. This testimony is consistent with the hypothesis that after Boban had fled from the situs of

the stabbing, appellant continued to stab at the victim and inflicted the several other wounds upon the victim which caused the latter's death. In any event, the prosecution's evidence clearly pointed to appellant as having administered at least one stab wound unto the victim.

The defense of the appellant was alibi. He claimed that at around 2:00 o'clock a.m. of 6 October 1984, he was at a construction site in Elcano Street near Recto Avenue, about ten (10) meters away from the Asuncion Market. Thus, he insisted that he could not have been the assailant of the victim and that he was "framed up" by the police investigators who simply wanted to dispose of the case.

On this point, the trial court aptly observed that:

"Accused defense of alibi deserves scant consideration. It cannot prevail against positive identification of him made by witness Victor Boban. Significant too is the fact that the place where he was about 2:00 o'clock in the morning of October 6, 1984 is only about 10 meters away from the crime scene, at the Asuncion Market. It was not therefore impossible for him to have been at the crime scene at the time of its commission. Worst still, if he was at the time of the commission of the crime actually working at Elcano Street, this could have been easily corroborated. But no corroboration was offered. This circumstance makes his defense of alibi more weak x x x." [16]

Under prevailing doctrine, the trial court's conclusions on the credibility of witnesses are entitled to great respect and great weight on appeal. [17] The Court believes that this doctrine must be applied in the present case.

The element of treachery has been adequately shown. The location of the five (5) stab wounds, all on the victim's back, and the deadly nature of at least two (2) of these, plus the suddenness of the stabbing assault, all point to the design to kill the victim without giving him an opportunity to defend himself. [18]

Appellant assails the legality of his arrest by the police investigators allegedly for the reason that it "was based solely on the basis of the tip and say-so from a telephone informant x x x who refused to identify himself."

The Court considers that appellant is estopped from questioning the legality of his arrest. An examination of the record reveals that this issue is being raised for the first time by appellant before this Court. He had not moved for the quashing of the information before the trial court on this ground. Thus, any irregularity attendant to his arrest was cured when he voluntarily submitted himself to the jurisdiction of the trial court by entering a plea of not guilty "and [by] participating in the trial". [19]

Besides, the record does not show that the police investigators had acted recklessly in arresting the appellant. The police investigator Paterno Banawel, to whom the prosecution witness Victor Boban gave a description of the assailant, had encountered difficulties in tracking down the appellant, a member of the "sigue-sigue commando" gang. [20] It is well-known that witnesses to killings usually do not want to undergo the trouble and inconvenience of going to court and being exposed to reprisal. [21] The trial court noted that "nobody wanted to talk because they do not want to get involved". [22] It took about two (2) months for the caller who refused to be identified to muster enough courage to inform police investigator Banawel about appellant's whereabouts. Consequently, the prompt action of the police investigators in arresting appellant must be presumed to have been taken in good faith and in reasonable fear that appellant would forthwith flee.

Finally, the Court considers that appellant's claim that he was arrested and exposed to accusatorial proceedings without being informed of his constitutional rights, has not been substantiated. The booking and information sheet and progress report marked as Exhibits "G" and "I" respectively, which were prepared by the police investigators explicitly stated that appellant had been properly informed of his constitutional rights. In fact, after he was informed of his constitutional rights, appellant chose to remain silent and requested the assistance of counsel. It has not been asserted that appellant gave a confession, judicial or extrajudicial, oral or written.

WHEREFORE, the Decision of the trial court dated 19 November 1985 in Criminal Case No. 84-32666 is hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 4.

[2] Id., p. 13.

[3] Id., pp. 38-46.

[4] TSN, 19 June 1985, p. 8; p. 16.

[5] Id., pp. 3-4; 8-9.

[6] TSN, 19 June 1985, p. 11.

[7] Id., pp. 6-8.

[8] TSN, 2 October 1985, p. 11.

[9] Id., pp. 7-8.

[10] Record, p. 30.

[11] TSN, 19 June 1985, pp. 3-4; 8-9.

[12] TSN, 19 June 1985, p. 5.

[13] People vs. Obenque, 147 SCRA 488 (1987); People vs. Oquino, 122 SCRA 797, (1983).

[14] 147 SCRA 404 (1987).

[15] People vs. Morales, 113 SCRA 683, (1982); People v. Peñaranda, 107 SCRA 686 (1981); People v. Cabatlao, 108 SCRA 359; People v. Aposaga, 108 SCRA 574 (1981).

[16] Decision dated November 19, 1985; See People v. Cruz, 142 SCRA 576, (1986).

[17] People vs. Oliverio, 120 SCRA 22 (1983); People vs. Chavez 121 SCRA 806 (1983); People vs. Alison, 122 SCRA 9 (1983).

[18] People v. Carzano, 95 SCRA 146 (1980); People v. Beltran, 137 SCRA 508 (1985).

[19] Gimenez v. Nazareno, 160 SCRA 1, (1988); Solano v. Court of Appeals, 126 SCRA 122 (1983).

[20] Record, p. 91.

[21] People v. Mediana, 110 SCRA 130 (1981); People v. Pascual Jr., 109 SCRA 197 (1981).

[22] Decision, p. 2; Rollo, p. 10.

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