

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIONESIO MENDOZA, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal on the Judgment[1] of the Regional Trial Court (RTC), Branch 42, Dumaguete City dated January 25, 2007 in Criminal Case No. 13807 finding accused-appellant Dionesio Mendoza guilty beyond reasonable doubt of rape with homicide and penalizing him with reclusion perpetua with all its accessory penalties and directing him to pay the heirs of the victim the amounts of P100,000 as civil indemnity, P50,000 as moral damages and P20,000 as nominal damages.

The Antecedents

Accused-appellant Dionesio Mendoza (appellant) was charged of rape with homicide for the killing of 9 year old girl, AAA, under the following Information,[2] viz.:

That on 31 January 1999 at about 5:30 o'clock in the afternoon in Daro, Nagbu-alao, Basay, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs did then and there willfully, unlawfully and felon[i]ously have carnal knowledge with [AAA], nine [9] years of age against her will, and on the occasion thereof, said accused did and there willfully, unlawfully and felon[i]ously applied so much pressure and over-powering strength on said [AAA] which caused her death soon thereafter.

CONTRARY TO LAW.

When arraigned appellant pleaded not guilty.[3] Subsequently, trial ensued.

The version of the prosecution was comprehensively summarized[4] by the Office of the Solicitor General (OSG), to wit:

XXX is the father of AAA. AAA was born on March 21, 1989.[5] Their house was next to that of appellant Dionesio Mendoza. The appellant knew AAA, and would even send her to do errands for him like buying cigarettes or liquor. At six o'clock in the morning of January 31, 1999, Dionesio Gumahad saw the appellant buying cigarettes from the store near his house. Later, at three o'clock in the afternoon, Edwin Magbanua, a barangay councilor, saw appellant, who he knew, sitting at the same store near his house.[6]

Around five o'clock, the appellant, together with nine-year old AAA, went to the house of Mauricio Macahipay, also in Daro. The appellant borrowed Mauricio's slippers, telling him that he needed to go somewhere to collect payments. Mauricio refused. The appellant and AAA then headed towards Punta Bato.

On their way to Punta Bato, the appellant and AAA were seen together by Nicardo Telmo, a barangay tanod of Daro. Nicardo was fetching water near the land of Ricardo Cafayday.

Around the same time, Edwin Buenconsejo, a fisherman and neighbor of the appellant, fetched his carabao which was pastured on the land of Cafayday. While on his way home a few minutes later, he saw two persons

lying on the ground. They were on top of and facing each other. Edwin was of the impression that they were making love, as he saw the person on top was naked. When this person turned his head, Edwin saw that it was the appellant. Edwin did not see who the other person was.

Around nine o'clock that night, XXX was surprised when AAA failed to come home. She would normally spend her evenings watching Betamax movies in the house of their neighbor. However, when the movie ended and she was not yet home, XXX got worried. He inquired from his neighbors and even asked them to help him search for AAA. He requested some to dive in the sea, thinking the child could have drowned. Despite all their efforts, they were unable to find her that night.

About two o'clock in the morning of the following day, AAA's grandparents BBB and CCC, went to the house of Mauricio to ask if he had seen the child. He related that he saw AAA with the appellant earlier in the afternoon of January 31, when the appellant dropped by his house to borrow his slippers. They immediately relayed this information to the barangay tanod.

PO3 Wilfredo Cardona of the Basay Police Station received the request for police assistance on February 1, 1999 at about three o'clock in the morning. Because the appellant was the last person seen with AAA, PO3 Cardona went to his house to invite him for questioning. When the appellant's parents protested, PO3 Cardona summoned Mauricio, who went to the Municipal Hall where the police were holding their investigation and identified the appellant as the person he saw together with AAA. However, as the appellant denied having anything to do with the missing girl, he was released from police custody.

The search for AAA was resumed on the morning of the next day, February 1, 1999. At around 10:00 a.m., barangay tanod Nicardo Telmo, Junior Carias, Edgar, Apad and Vicente found AAA's dead body lying face down in the muddy waters near a nipa trunk in Punta Bato. The body was partly submerged in the water, about a foot deep. Nicardo told XXX about it. Thereafter, the police arrested the appellant.[7]

When Nicardo went near the seashore later that night, he saw Edwin and told him that AAA was killed and the body was found at Punta Bato. They went to the place where the body was discovered and Edwin realized that it was at the same place where he saw the appellant at around 5 p.m. The day before, making love to a person whom he did not recognize.

AAA's body was examined by Dr. Jacqueline Borja-Valencia, a medico-legal officer. She found that AAA died of asphyxia secondary to larygospasm and glottic close. She also found that there was forceful penetration of AAA's sex organ, which indicated sexual abuse. There was a laceration in the clitoris about 1.5 centimeters long, and hematoma on both sides of the vaginal wall. She also found a complete laceration at the six o'clock position and blood clots in the vaginal canal. However, she found no spermatozoa, which may have been washed out in the water where AAA's body was found. She indicated her findings in a Medical Certificate[8] and also signed AAA's Death Certificate.[9]

Dr. Rene E. Cam of the National Bureau of Investigation also conducted a post-mortem examination of AAA's body on February 10, 1999. He found that AAA sustained the following injuries: abrasion, hematoma, lacerations of the hymen, hematoma of the skull, fracture of the skull and haemorrhage intracranial. He clarified that the cause of death was traumatic head injury, as there was haemorrhage on the right side of the brain as a result of the linear fracture of the middle cranial fossa, which he surmised she could have sustained during a struggle when her head was pounded on the ground. He indicated his findings in a Necropsy Report.[10]

For the burial and embalming of his daughter, XXX spent P20,000.00.

Meanwhile, appellant interposed denial and alibi as his defenses. From the testimony of the defense witnesses, it could be gathered that appellant and his friend Felimon Carreon, Jr. arrived in barangay Daro, Nagbu-alao, Basay at around 5:50 o'clock in the evening on January 31, 1999. Appellant came from his residence in the mountain

barangay of Sitio Apanangon, Minaba, Bayawan City. He went to Daro to visit his parents and deliver rice and corn to them.

Appellant and his friend took their supper at around 6:00 o'clock in the evening and an hour thereafter, they went to sleep in the unfinished house of Moroy Catid. It came as a surprise to them that at around 4:00 o'clock dawn on February 1, 1999 appellant was awakened by the police and brought to the municipal hall for questioning about AAA who was reported missing. Appellant denied knowing AAA but claimed that he knew the girl's father as his mother's enemy.

After the proceedings, the trial court found appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion of its Decision reads, viz:

WHEREFORE, finding the accused Dionesio Mendoza GUILTY beyond reasonable doubt of the crime of rape with homicide, he is hereby sentenced to suffer a penalty of reclusion perpetua with all its accessory penalties. He is further directed to pay the following amounts to the heirs of [AAA]: P100,000 as civil indemnity, P50,000 as moral damages and P20,000 as nominal damages

SO ORDERED.[11]

Aggrieved, appellant brought the matter to us on a lone assignment of error, that:

THE LOWER COURT ERRED IN BELIEVING TOTALLY THE VERSION OF THE WITNESSES OF THE PROSECUTION AND NOT GIVING CREDENCE TO THE TESTIMONIES OF THE WITNESSES OF THE DEFENSE WHICH ARE MORE BELIEVABLE AND CONSONANT WITH HUMAN EXPERIENCE.

This Court's Ruling

The appeal is without merit.

The Supreme Court has had occasions to discuss the intrinsic nature of a rape case as one which involves only two parties, the rapist and the victim. Thus, conviction or acquittal in rape cases depends entirely on the credibility of the victim's testimony because only the participants to the crime can testify as to its occurrence.[12] Unfortunately in this case, the victim's testimony could no longer be heard for her lips had been sealed by death. The prosecution had to rely on the testimonies of its witnesses and what they proffered were not direct, but only circumstantial evidence.

It has been settled, however, that direct evidence of the commission of a crime is not the only basis from which a court may draw its finding of guilt.[13] Section 4, Rule 133 of the Rules on Evidence recognizes that circumstantial evidence is adequate for conviction, as follows:

SEC. 4. Circumstantial evidence when sufficient. — Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

In the instant case, the circumstances testified to by the prosecution's witnesses, when pieced together, justify the conclusion that appellant was the one who raped and killed AAA. The circumstances are as follows, thus:

(1)

appellant was the last person seen by Mauricio Macahipay (Makahipay) together with AAA on January 31,

1999 at about 5:00 o'clock in the afternoon. Macahipay saw appellant and AAA go towards the direction of Punta Bato;

(2)

another witness, barangay tanod Nicardo Telmo, who was fetching water, also saw appellant and AAA on their way to Punta Bato;

(3)

Edwin Buenconsejo (Buenconsejo) saw appellant having sexual intercourse with somebody in Punta Bato;

(4)

AAA's lifeless body was found near the area where Buenconsejo saw appellant having sexual intercourse with someone;

(5)

During the search for AAA, appellant was immediately pointed to by Macahipay as the person who he last saw together with AAA;

(6)

Appellant was at once investigated by the police at dawn on February 1, 1999 even before the body of AAA could be found;

(7)

the medico-legal officer, upon examining AAA's dead body, found that there was forceful penetration of her sex organ, indicating sexual abuse.

The above circumstances sufficiently point to appellant as the author of the crime. Taken together, these established circumstances form an unbroken chain of events that point to appellant's culpability and to no other conclusion except his guilt.

Noteworthy, prosecution witnesses Macahipay and Buenconsejo positively identified appellant as the author of the crime. It has been ruled in the case of *People of the Philippines v. Manchu*[14] that positive identification may be provided not only by a witness actually identifying an accused as the one who perpetrated the crime, but also by one who has seen the accused at the scene of the crime on or about the time of the alleged incident. It was explained therein that:

Positive identification pertains essentially to proof of identity and not per se to that of being an eyewitness to the very act of commission of the crime. There are two types of positive identification. A witness may identify a suspect or accused as the offender as an eyewitness to the very act of the commission of the crime. This

constitutes direct evidence. There may, however, be instances where, although a witness may not have actually witnessed the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as when, for instance, the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence. [Emphasis and underscoring supplied.]

As against the prosecution's witnesses' positive identification of appellant as the perpetrator of the crime, the latter only countered with denial and alibi. Unfortunately, such lackluster defenses failed to cast doubt on the positive identification made by Macahipay and Buenconsejo. Between the positive assertions of the prosecution witnesses and appellant's negative averments, the former indisputably deserve more credence and are entitled to greater evidentiary weight.[15] Besides, denial and alibi are intrinsically weak defenses. These require to be supported by strong evidence of non-culpability in order to be credible.

Unfortunately, however, appellant failed to proffer the required evidence of non-culpability. On the contrary, the evidence shows that at dawn on February 1, 1999, and even before the lifeless body of AAA could be found, Macahipay already pointed to appellant as the one possibly involved in the case of the missing girl. The time element, specifically the immediacy of Macahipay's identification of appellant, is a crucial consideration, for the same eliminates the possibility of fabrication in the said witness' testimony.

Courts view the defense of alibi with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily.[16] For alibi to prosper, it is not enough to prove that the appellant was somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[17] In this case, it was never disputed that appellant was in Daro, thus, it was not at all impossible for him to be at the scene of the crime during its commission.

The testimony of defense witness Felimon Carreon, Jr. that appellant was always with him from the time they arrived in Daro deserves no probative weight. In *People of the Philippines v. Sumalinog, Jr.*, [18] it was held that if a defense witness testifies to support the specific defense of alibi, courts should view such testimony with skepticism when such witness is a family member, relative or close friend. This is due to the very nature of alibi that the witness affirms. One can easily fabricate an alibi and ask friends and relatives to corroborate it.

Appellant ascribed doubt on the testimonies of the prosecution witnesses by contending that such testimonies contradicted each other and were not in accord with natural human behavior and turn of events. Appellant pointed out the following: First, the father XXX testified that he was surprised when at 9:00 o'clock in the evening, his daughter did not come home after the betamax show was finished. If XXX's testimony was to be believed, then AAA must have been present and alive at supper time, thereby belying that she was abused and killed at about 5:00 o'clock in the afternoon. Second, Edwin Buenconsejo testified that he saw two persons making love at Punta Bato. If this was true, the said witness could have already called appellant's attention or reported what he saw to the authorities considering that having sexual act with a child was detestable. Also, Edwin Buenconsejo could have immediately pointed to the authorities the location of AAA's body during the search at dawn. Third, appellant pointed out that it was overly bold for him to let himself be seen together with AAA immediately before he committed the heinous crime on the girl. Certainly, it was an unlikely act for one who has bad intentions. Lastly, appellant posited that he could just have escaped, or returned to his residence in the mountain, or go to other places after committing the crime, instead of sleeping in a house which was separated only by a wall from the victim's house.

Appellant's contentions and observations do not taint the credibility of the prosecution witnesses. His issue on the testimony of AAA's father as supposedly suggesting that AAA went missing only after the betamax show, is

already ironed out by the records. XXX testified that he last saw his daughter at around 4:30 o'clock in the afternoon on January 31, 1999.[19] Hence, there is no basis to sustain appellant's proposition that XXX's testimony indicated the possibility that AAA was still alive at supper time.

As for Buenconsejo's failure to call appellant's attention when he saw the latter having sexual intercourse with a child, as well as to immediately point to the authorities the location of AAA's body, such witness' reactions could not be considered highly questionable. Buenconsejo testified that he did not actually see appellant's sexual partner and merely thought that it was appellant's sweetheart so he no longer minded them.[20] Buenconsejo could not also be expected to point to the location of AAA's body during the dawn search made by the girl's family, neighbors and the authorities because during such time, he was at sea. Buenconsejo testified that he left to fish at around 8:00 o'clock in the evening on January 31, 1999 and came back only the next day.[21]

Anent appellant's claims that it would be imprudent for him to display himself together with AAA before he committed the crime, and that he should have escaped after the incident, We say that it is not for Us to speculate on appellant's mindset prior to his commission of the crime. In the same manner, We also do not intend to reflect on his reaction thereafter. The workings of a human mind are unpredictable and people act differently. While the majority may do and react as expected, there is really no conclusive behavioral response applicable to everybody. At any rate, appellant's behavior, although considered by him as deviant from the norm, is not enough to justify his acquittal as this still did not detract from the fact that the prosecution had sufficiently established his guilt beyond reasonable doubt with the circumstantial evidence presented during the trial.

In sum, the circumstances pointed out by appellant do not impair the credibility of the prosecution's witnesses. These are inconsequential to warrant a reversal of the trial court's ruling. The decisive factor in the prosecution for rape with homicide is whether the commission of the crime has been sufficiently proven. As the observations of appellant had nothing to do with the elements of the crime of rape with homicide, they cannot be used as ground for his acquittal.[22]

We, however, find the need to specify that the penalty of reclusion perpetua imposed on appellant shall be without eligibility for parole, in accordance with the ruling in the case of *People of the Philippines v. Villarino*. [23] Pursuant also to the said ruling, We modify the award of moral damages and increase it to P75,000.00; and grant exemplary damages in the amount of P50,000.00 to AAA's heirs. They are entitled to such award since Article 2229 of the Civil Code allows the award of exemplary damages in order to deter the commission of similar acts and to allow the courts to forestall behavior that would pose grave and deleterious consequences to society.

WHEREFORE, the appeal is DENIED. The Judgment of the Regional Trial Court, Branch 42, Dumaguete City dated January 25, 2007 in Criminal Case No. 13807 is hereby AFFIRMED with the following MODIFICATIONS:

- The penalty of reclusion perpetua imposed on Dionesio Mendoza shall be without eligibility for parole;
- The award for moral damages is increased to P75,000.00; and
- Dionesio Mendoza is also directed to pay exemplary damages in the amount of P50,000.00 to the heirs of AAA.

The rest of the appealed decision STANDS.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 38-49.

[2] Record, pp. 1-2.

[3] See Certificate of Arraignment, record, p. 36.

[4] Summary taken from Appellant's Brief with footnotes omitted, except for those indicating documentary evidence. See rollo, pp. 80-84.

[5] See Birth and Baptismal Certificates, record, pp. 372

[6] Rollo, pp. 80-84.

[7] See Police Report, record, p. 378.

[8] Record, p. 377.

[9] Record, p. 375.

[10] Record, p. 382.

[11] Rollo, p. 48.

[12] See People of the Philippines v. Padua, G.R. No. 169075. February 23, 2007.

[13] See People of the Philippines v. Manchu, G.R. No. 181901. November 28, 2008.

[14] G.R. No. 181901. November 28, 2008.

[15] See People v. Bang-ayan, G.R. No. 172870. September 22, 2006.

[16] See People v. Villarino, G.R. No. 185012. March 5, 2010.

[17] See People v. Villarino, G.R. No. 185012. March 5, 2010.

[18] G.R. No. 128387. February 5, 2004.

[19] See TSN dated August 12, 1999, p. 26.

[20] See TSN dated February 3, 2000, p. 9.

[21] See TSN dated June 1, 2000, pp. 3-4.

[22] See People v. Villarino, G.R. No. 185012. March 5, 2010.

[23] G.R. No. 185012. March 5, 2010.

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