

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONIFACIO YUTILA, AQUILINO YUTILA AND ESPERIDION YUTILA,
DEFENDANTS-APPELLANTS.**

G.R. No. L-32791. January 27, 1981

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PER CURIAM:

This is an automatic review of the decision of the Court of First Instance of Samar, Branch VI, in Criminal Case No. 38, entitled "The People of the Philippines, Plaintiff vs. Bonifacio Yutila, Aquilino Yutila and Esperidion Yutila, Defendants", the dispositive portion of which reads:

"WHEREFORE, this Court hereby declares each of the accused, namely: Esperidion Yutila, Bonifacio Yutila, and Aquilino Yutila, 'GUILTY' beyond reasonable doubt of the crime of rape with Homicide under paragraph 3 of the Republic Act No. 4111 and each is hereby sentenced to suffer the supreme penalty of DEATH by electrocution. That each accused is ordered to indemnify the surviving heirs of the victim in the amount of P12,000.00 and to pay the costs. The weapons used in the commission of the crime marked Exhibits K and L are hereby ordered confiscated in favor of the government and to be disposed of in accordance with law. The Clerk of Court is hereby directed to transmit the records of the case and the evidence to the Supreme Court for automatic review.

"SO ORDERED.

"Guiuan, Eastern Samar, September 30, 1970."[1]

The three defendants were accused of Rape with Homicide in the following:

"AMENDED
I N F O R M A T I O N

"The undersigned, Second Assistant Provincial Fiscal of Eastern Samar, accuses Bonifacio Yutila, Aquilino Yutila and Esperidion Yutila of the crime of Rape with Homicide, committed as follows:

"That on or about the 24th day of April, 1970, in the municipality of Gen. MacArthur, Province of Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with Gregorio Yutila who is still at large, with lewd design, conspiring, confederating together and mutually

helping one another by means of force, violence and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge with one Fidela Demangay Bederio, against her will and without her consent; and on the occasion of said rape and in order to effect the same, the said accused, conspiring, confederating together and mutually helping one another with intent to kill one Fidela Demangay Bederio did, then and there, willfully, unlawfully and feloniously attack, assault, stab and wound the latter with sharp bolos which the accused have conveniently provided themselves for the purpose thereby inflicting upon said Fidela Demangay Bederio stabbed wounds on the different vital parts of her body, which wounds caused the death of said Fidela Demangay Bederio.

"CONTRARY TO LAW, with the aggravating circumstances of (1) superior strength; (2) the crime was committed in an uninhabited place; and (3) recidivism, the accused Bonifacio Yutila having been convicted by final judgment of the crime of Homicide on January 14, 1964 and sentenced to suffer an imprisonment of two (2) years, four months and one (1) day of prision correccional, as minimum, to six (6) years and one (1) day of prision mayor as maximum in Criminal Case No. 264 before the Court of First Instance, Br. VI, Guiuan, Eastern Samar.

"Guiuan, Eastern Samar, July 21, 1970."[2]

The three defendants assign the following errors:

"The lower court erred:

"I

"In convicting the accused under the original information that had already been supplanted or superseded by the amended information;

"II

"In holding that the victim was raped by each of the four accused is borne by the testimony of Dr. Jose Deguito.

"III

"In finding that there is here a clear and conclusive evidence that the three accused Aquilino, Esperidion, and Bonifacio, all surnamed Yutila have alternately committed the crime of rape.

"IV

"In stating that from the date when the victim was committed on April 24, 1970 and the subsequent events that followed will show that the behavior of the three accused is that of criminals under pursuit, being always on guard and armed with the weapons even on occasions which normally does not necessitate and demand it.

"V

"In not finding that the vital testimony of Virginita Bederio who claimed to have witnessed the alleged crime being perpetrated by the accused was full of inconsistencies, contradictions, falsehoods, and discrepancies.

"VI

"In declaring each of the accused guilty of the crime charged beyond reasonable doubt."[3]

The facts, as stated in the brief of the defendants, are:

"The prosecution alleged in this case that on April 24, 1970, Virginita Bederio, while looking for her mother, Fidela Demangay Bederio, in the Municipality of General MacArthur, Eastern Samar, saw the three accused, Bonifacio, Aquilino, and Esperidion, together with their brother Gregorio, all named Yutila, stabbing Fidela with a knife and long bolos. Fidela died as a result thereof. Virginita informed her father Ciriaco. Ciriaco after having viewed the body sent Virginita first to the barrio captain in Cancuevas and then to the chief of police of Gen. MacArthur, Eastern Samar. The chief of police the next morning investigated the place of the incident and made a sketch of the same. Then they brought the body to the medical officer Dr. Jose Dequito and had the same autopsied. Afterwards, the prosecution filed this complaint.

"The defense claimed that on April 24, 1970 Esperidion Yutila was at his house in Sitio Sapia, Bo. Magsaysay, Eastern Samar. He was with his family and attended to his farm at the back of his house the whole day. Bonifacio and Aquilino together with Gregorio were at Bo. Viga attending a town fiesta. Later on, the three brothers, Esperidion, Bonifacio, and Aquilino met in Bo. Togop to discuss the death of their brother Gregorio who was killed earlier and while attending a dance at a barrio dance hall were arrested, charged with, and tried for the crime of rape with homicide."[4]

According to the Plaintiff-Appellee, the facts are:

"In the morning of April 24, 1970, the deceased Fidela Demangay de Bederio went to their farm at sitio Togop, Barrio San Isidro, Gen. MacArthur, Eastern Samar, to gather some food for her family. (pp. 21-22, t.s.n., July 22, 1970). At about 11 o'clock the same morning, her husband, Ciriaco Bederio, who was home in bed suffering from high fever, asked his eldest daughter, 12 year-old Virginita, to go to the farm and help her mother carry the food she may have gathered. (t.s.n., pp. 22-23, id.). Upon reaching the place, Virginita looked around but could not find her. (t.s.n., 24, id.) Suddenly, she heard her mother's voice saying: 'Pacio, Goyong, Pediong, Quilino, because you have (had) sexual intercourse with me, please do not kill me'. (t.s.n., 24, id.)

"Proceeding towards the direction of her voice, Virginita saw her mother lying near the bank of a creek in a sidewise position and being stabbed by appellants and their brother Gregorio, with a knife and boloes. (t.s.n., 25-26, id.). She hid herself among the bushes and, after the assailants left, Virginita approached her mother and tried to talk to her but the latter did not respond. (t.s.n., 26, id.) Whereupon, she went home and told her father what she had seen (p. 27, t.s.n., id.). They both repaired to the scene of the crime and found Fidela dead.

"Virginita was then sent by her father to the barrio captain in Cancuevas and later to the Chief of Police of Gen. Mac Arthur, Eastern Samar, to inform them about the incident. (t.s.n., 63-64, July 22, 1970). The following morning, the Chief of Police, accompanied by Ciriaco and his daughter Virginita, investigated the place of the incident and made a sketch of the same. (Exh. F, p. 41, Rec.; pp. 29, 48-49, t.s.n., id.).

"Fidela's body was taken to the puericulture center of Gen. MacArthur where Municipal Health Officer Dr. Jose Dequito, on April 26, 1970, performed an autopsy and later set forth his findings in a medical report (Exh. A, p. 8, Rec.) showing that the deceased sustained multiple wounds and abrasions on different parts of her body (t.s.n., 30, 5-8, id.). He also found seminal fluid in the victim's vaginal canal, as well as a horizontal laceration at the bifurcation of the labia minora indicating that the deceased was sexually abused (t.s.n., 9, id.).

"At dawn of May 3, 1970, appellants were apprehended as they were attending a dance party at the school building in barrio Taogap, Gen. MacArthur. (t.s.n., 81, 87-88, id.). A short knife and a long bolo were recovered from the possession of Bonifacio and Esperidion, respectively. (t.s.n., 83-84, 89-90, id.)."[5]

The reference by the trial court in its decision to the information as originally filed is of no moment. The original and the amended information are substantially the same. The only difference is that in the original information it is alleged that Gregorio Yutila, one of the alleged perpetrators of the crime, was already dead while in the amended information it is stated that he is alive but at large. The record shows that the defendants were duly apprised of the contents of the amended information.

The lack of preliminary investigation did not impair the validity of the proceedings. It did not affect the jurisdiction of the Court of First Instance over the case. Moreover, the three defendants pleaded not guilty upon being arraigned. The denial of the accused of his right to preliminary investigation cannot be raised for the first time on appeal.[6]

That the victim was raped by each of the three defendants and Gregorio Yutila was established by the prosecution witnesses Virginita Bederio and Dr. Jose Dequito. The physical evidence consisting of the torn clothes of the victim, the presence of semen in her private parts, the physical injuries sustained by her not only in her private parts but also in other parts of the body show that Fidela Demangay Bederio had been raped.

It is a fact that the defendants were arrested while attending a party. That they had returned to Bo. Togop, the very place where the crime took place, is not evidence that they are innocent. It is possible that the said defendants thought that nobody could connect them with the rape and the death of the victim.

The alleged contradictions in the evidence of the prosecution are on mere details. Said contradictions are not sufficient to render the testimony of Virginita Bederio incredible. She was subjected to a lengthy cross-examination. Her positive testimony that the defendants and their brother Gregorio Yutila stabbed her mother despite the latter's plea to spare her life because she had already been raped by the malefactors had not been shaken.

The defendants denied having committed the crime charged in the amended information and alleged that they were elsewhere when the said crime was committed. The defense of alibi cannot prevail over the positive testimony of Virginita Bederio. It is the weakest defense that an accused can avail of, and cannot prosper, even in cases where proof of alibi is well-supported by the testimony of witnesses, when the identity of the defendants, as the persons who committed the crime is fully established by clear, explicit and positive testimony.

It is apparent from the manner that the defendants committed the act charged in the amended information that there was conspiracy. The statement made by the victim Fidela Demangay de Bederio that she had been raped by the three defendants and Gregorio Yutila was made immediately after she had been raped and before she was stabbed. Hence, her statement is part of the *res gestae*.

The conduct and behavior of Virginita Bederio from the time she witnessed the killing of her mother until she reported said crime to her father and to the authorities, as well as her manner in testifying in court, indicate that this witness was testifying to the truth. No motive has been shown why Virginita Bederio should impute the commission of such a grave felony to said defendants.

The trial court has correctly found the defendants guilty of rape with homicide and imposed the proper penalty.

WHEREFORE, the decision of the trial court sought to be reviewed is hereby **AFFIRMED**.

SO ORDERED.

Teehankee, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, de Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., did not take part.

Barredo, J., in accordance with the doctrine in *Jayme Jose*, I vote for the imposition of three death penalties on each of the appellants.

[1] Rollo, p. 56.

[2] Rollo, pp. 17-18.

[3] Rollo, pp. 149-150.

[4] Rollo, pp. 148-149.

[5] Brief for the Plaintiff-Appellee, pp. 2-4, Rollo, p. 249.

[6] *People vs. Mijares*, 90 Phil., 102.

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