

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REMY DIÑO, ACCUSED-APPELLANT.*G.R. No. L-41462. April 15, 1988*

Ponente: MELENCIO-HERRERA, J.

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Originally, this was an appeal by the three accused, Remy Diño, Jose Dequito and Salvador Dequito from the Decision of the then Court of First Instance of Iloilo, Branch III, finding each of them guilty of three (3) crimes of Rape with Homicide and sentencing each one to three (3) penalties of reclusion perpetua: to indemnify the heirs of Melinda Boglosa, jointly and severally, in the sum of P12,000.00; and to pay the costs.

On November 26, 1985, accused Salvador Dequito and Jose Dequito filed an Urgent Motion to Withdraw Appeal, which was granted by the Court, and entry of judgment in their respect was made on December 13, 1985 (p. 172, Rollo).

The evidence for the prosecution is summarized in the People's Brief, thus:

"Jose and Salvador, both surnamed Dequito, Remy Diño and one Melinda Boglosa were all from the barrio of Tambuelan, Municipality of Dumangas, Iloilo (p. 7, tsn, May 3, 1974).

"On November 13, 1973 at about noontime, while Roberto Dumancas, a ten-year old boy and a relative of Remy Diño, was herding his carabao in a ricefield situated at Sitio Sapa, Barrio Tambuelan, Municipality of Dumangas, Iloilo, he saw Jose and Salvador Dequito and Remy Diño at about a distance of fifty (50) meters away (pp. 5, 6, 17, 26, tsn, May 3, 1974). Shortly after, Roberto Dumancas saw Melinda Boglosa come along (pp. 8, 27, tsn, May 3, 1974). As Melinda neared the group, Salvador Dequito suddenly pulled her down which caused both of them to fall on the rice paddy (p. 8, tsn, May 3, 1974). Remy Diño held the hands of Melinda, while Jose Dequito held her legs (pp. 8, 9, tsn, May 3, 1974). Thereafter, Salvador Dequito took off his pants and underwear and went on top of Melinda and had carnal knowledge of her (p. 9, tsn, May 3, 1974). Jose Dequito and Remy Diño then took turns ravishing Melinda Boglosa (p. 11, tsn, May 3, 1974). When the three were through with their beastly act, Salvador Dequito choked Melinda Boglosa and with an engine cranker, struck her on the forehead (pp. 12, 14, tsn, May 3, 1974). Then the three dragged Melinda Boglosa and pushed her head on the ground which was knee-deep with water. She was later found dead (p. 14, tsn, May 3, 1974).

"It appears that at the start of the above-described incident, Roberto Dumancas sought cover behind some talahib from where he witnessed the incident in its entirety (p. 15, tsn, May 3, 1974).

"After the incident, Roberto Dumancas returned to his carabao, which was a meter away from where he was hiding (p. 15, tsn, May 3, 1974), and then went home. He told a relative named Fe of the incident he had witnessed (pp. 16, 18, 27, tsn, May 3, 1974).

"Days after the incident, Roberto Dumancas was brought by a PC soldier to Barotac, Nuevo, Iloilo where he was investigated regarding the incident (pp. 18, 19, 29, tsn, May 3, 1974). Afterwards, he was brought to Fort San Pedro, Iloilo City, headquarters of the Philippine Constabulary where he signed a statement (p. 19, tsn, May 3, 1974; Exh. 'A' p. 55, Records).

"Remy Diño also gave a written statement on November 19, 1973, before PC Soldier Ismael Suyo confessing his participation in the crime as well as those of his companions, Salvador and Jose Dequito (pp. 83, 84, 87, tsn, May 30, 1974; p. 9, tsn, May 31, 1974; Exh. 'C' p. 57, Records). The said confession was sworn to and subscribed before Atty. Salvador Solis, Assistant Clerk of Court of the Court of First Instance, Iloilo (p. 75, tsn, May 30, 1974; pp. 42, 45, 46, tsn, May 31, 1974)." (pp. 2-4, Brief for the Appellee).

The Necropsy Report of the NBI Medico-Legal Officer gave the following:

"Post Mortem Findings:

"Height - 148 cms. Weight - 115 lbs.

"Well developed, healthy victim, froth with blood coming out of both nostrils, around 22 hours dead.

"WOUND

1 1/2 cms. x 0.2 cms. 75 degrees perpendicular to the left, right side neck, 128 cms. from the heel of the feet right, 7 cms. from the median line, at the level of hyoid bone of the neck.

"GENITALIA-Hymen-laceration, deep at 3:00 blood coming out from the site. Vaginal, filled with viscid, albuminous fluid with faint-grayish-yellow color, having the characteristic of fishy odor.

"MICRO-CHEMICAL EXAMINATION OF THE FLUID CONTENT OF THE VAGINA

1. Positive for seminal fluid

2. Positive for spermatozoa

"CONCLUSION

1. Sexually abused

2. Died of asphyxia by strangulation and drowning."

On the other hand, the evidence for the accused-appellant, Remy Diño, as narrated in his Brief, reads in full as follows:

"x x x the Lower Court found the evidence for the accused Remy Diño which consisted of the testimonies of the following witnesses:

"Marcelino Dequito, 62 years old, a fishpond watcher and resident of Barrio Tambuelan, Dumangas, Iloilo testified that he knows the accused Remy Diño and the two other accused Salvador Dequito and Jose Dequito since they were small.

"In the morning of November 13, 1973, he saw Remy Diño in the house of Dominic Doronilla, which was near his house, together with other persons and they were singing.

"Before lunch on that day, Remy Diño went to his house and he told him to wait for his father (Remy's father) who was arriving from Barotac, Nuevo, Iloilo after lunch and he would be bringing some ice and also to borrow the carabao and cart of Violeta Donguila so that he can load the ice on it to bring it to the fishpond as they were harvesting fish that evening.

"Remy left to go to the house of Violeta which was also near by and later had lunch at his house and came back while they were having lunch.

"In his house then was living an American Peace Corps by the name of Kathleen Hustace. After lunch that day, she (Kathleen) and Remy Diño fed the birds.

"After lunch, he (Marcelino Dequito) left for his farm which was about one-half kilometer away and when he left his house he still saw Remy and Kathleen feeding the birds.

"While going to his farm he saw Simon Dequito who was calling for him and when he went to the place where he was standing, he saw that there was a body of a girl and they both helped each other to place the body on the rice paddy in order to revive her as she was still warm but they found that she was already dead.

"Simon Dequito called for help from the neighborhood while he went back to the barrio to inform Teopisto Dumayas, the Barrio Captain. The Barrio Captain then requested somebody to inform the authorities in the Poblacion, while he went to his house to rest and later on he went to the fishpond as they were going to harvest fish that evening. In the fishpond he saw the accused Remy Diño, who was then there and who brought the ice together with his father. They harvested the fish that evening and they, together with Remy Diño returned to the barrio the next day (t.s.n., pp. 117-151; Sept. 12, 1974).

"The next witness Kathleen Hustace testified that she was an American Peace Corps assigned to the Philippines. She arrived in the Philippines in August, 1973 and in the Barrio of Tambuelan, Dumangas, Iloilo in September, 1973.

"In Barrio Tambuelan, she stayed at the house of Marcelino Dequito (who testified before her). She knows Remy Diño and in the morning of November 13, 1973, she saw Remy in the house of Dominic Doronila, which was nearby, singing with other boys.

"After lunch, she and Remy Diño fed the birds and a little before one o'clock she went up the house to change and left afterwards as she had an appointment (t.s.n., pp. 151-197; September 12, 1974).

"The third witness was the accused Remy Diño who testified that he is one of the accused in this case. That in the morning of November 13, 1973, he, together with other boys were singing at the house of Dominic Doronila.

"Later he went to the house of Marcelino Dequito, which was also nearby and Marcelino told him to borrow the carabao and cart of Violeta Donguila as his father was arriving from Barotac Nuevo, Iloilo, after lunch with the ice which they were going to use to freeze the fish they were going to harvest that evening, and he and his father were supposed to load the ice in said cart to bring it to the fishpond.

"Because of said request of Marcelino, he borrowed the carabao and cart of Violeta and then went to his house for lunch. After lunch, he went back to the house of Marcelino and found them still having lunch. After lunch, he and Kathleen Hustace, an American Peace Corps living in the house of Marcelino Dequito fed the birds until a little before one o'clock when Kathleen went upstairs to change and later left.

"In the meantime, he waited for his father who later on arrived at around two o'clock in the afternoon in a tricycle from Barotac Nuevo, Iloilo, with the ice which they loaded in the cart of Violeta and which they brought to Palok Bigki, a distance of about one and a half kilometers away, there to be unloaded and brought to the fishpond by boat.

"Thereafter, he returned the carabao and cart to Violeta and returned to Palok Bigki and helped his father load the ice to the boat and brought it to the fishpond to be used in the harvest of the bangus fish that evening. That evening he was in the fishpond together with his father, Marcelino Dequito and others harvesting bangus and returned to the barrio only the next morning.

"On November 18, 1973 he was arrested by two PC soldiers, one of whom he came to know as Sgt. Ledesma, together with Salvador Dequito and they were brought to the PC Detachment at Barotac Nuevo, Iloilo at around 10:00 o'clock in the morning of the said date.

"In the evening they were investigated by Sgt. Ybarzabal in connection with the rape and death of the said girl by the name of Melinda Boglosa but he vehemently denied having anything to do with it. Because of his

denial, he was boxed, pushed and kicked by the PC soldiers who wanted him to admit that he committed the crime but he continued to deny that he had any connection with the same.

"His companion Salvador Dequito was also investigated.

"After he was investigated he was sent out of the room and told by Sgt. Ledesma to run but he did not run and embraced Sgt. Ledesma as he was afraid to run because he might be shot; on the contrary he insisted that he did not commit the crime that they wanted him to admit. In the next morning he was brought to the PC stockade at Fort San Pedro, Iloilo City where he was again investigated and maltreated and because of the maltreatment he was forced to sign a document that which he was told, if he will sign he will be released.

"While he was being investigated his companion Salvador Dequito was in the same room and later on investigated and maltreated by the PC soldiers.

"The next morning, he was brought to the Provincial Building before Atty. Salvador Solis of the Clerk of Court, who notarized his signature. He was afraid to complain to Atty. Solis about the maltreatment as he was accompanied by PC soldiers who warned him not to tell anybody what happened to him; thereafter, he was returned to the PC Stockade where he stayed for about three months where he was transferred to the Provincial Jail.

"When he was transferred to the Provincial Jail he became ill because of the maltreatment and in fact he was sent several times to the Provincial Hospital as he was spitting blood because of his maltreatment.

"He categorically denied having to do with the rape and killing of Melinda Boglosa (t.s.n., pp. 163-197; October 8, 1974) and his testimony was corroborated by Salvador Dequito who later on testified of the maltreatment that they suffered from the PC soldiers (t.s.n., pp. 2-20; August 2, 1974; t.s.n., pp. 119-137, October 9, 1974). Thereafter, the three accused presented Teopisto Dumayas, a Barrio Captain of Barrio Tambuelan, Dumangas, Iloilo who testified that after he came to know of the maltreatment of the three accused, the barrio captain and Barrio Council of Barrio Tambuelan, Dumangas, Iloilo, filed a petition, dated December 8, 1973, Exh. 'I', addressed to the Provincial Commander complaining of said maltreatment but no action was done on the matter (t.s.n., pp. 19-23; October 29, 1974).

"The next witness Simon Dequito testified that he knows the accused Remy Diño as well as the other accused since they were small. Remy Diño was in his house in the morning of November 13, 1973 but he (Simon Dequito) left the house after lunch to go to his farm around one (1) kilometer away situated at Sitio Sapa, Barrio Tambuelan, Dumangas, Iloilo, which was planted with palay. It was raining in the morning and when he reached his farm he saw a body lying on the rice paddy. He looked around and saw Paquita Cagison and Marcelino Dequito and he shouted and waved at them to come. When Marcelino arrived he pulled out the head of the victim because the head was submerged in the mud and then Marcelino Dequito helped him to put the body on the top of the rice paddy. As the body was still warm they put her on her side as she might still be alive and the water might come out. He did not then recognize the victim. Later he went to the house of Nicanor Divinagracia which was nearby if they recognized the victim but they did not recognize the deceased. Marcelino Dequito on the other hand went to notify Teopisto Dumayas, the Barrio Captain. Later Teopisto Dumayas, the Barrio captain arrived and still later the police also arrived. He further stated that he did not request the accused to plow that morning of November 13, 1973 because it was raining and there was deep water in his field (t.s.n., pp. 73-117, Sept. 9, 1974).

"Dr. Ricardo Jaboneta, medico legal officer of Iloilo City also testified that from his opinion as medico legal officer it is impossible to determine from a specific type of the semen whether it came from two or more persons (t.s.n., pp. 225-247; November 19, 1974)." (pp. 5-12, Brief for Accused-Appellant Remy Diño)

In this appeal, appellant Remy Diño makes the following Assignments of Error:

I.

The lower Court (through the Honorable Judge Numeriano G. Estenzo) erred in deciding the case without the transcript of stenographic notes of the testimony of all the accused and their witnesses having been transcribed as he (Judge Estenzo) did not hear the testimony of the witnesses as all the witnesses (both the prosecution and accused) testified before then Judge Castrense C. Veloso but whose resignation was accepted by the President before he can decide the case.

II.

The lower Court likewise erred in giving weight and credence to the unreliable testimony of prosecution witness Roberto Dumancas.

III.

The lower Court also erred in admitting the alleged confession of the accused Remy Diño (Exh. 'C') and in not finding the same as secured through force and intimidation.

IV.

The lower Court further erred in not considering the defense of the accused Remy Diño and in not believing the testimony of Kathleen Hustace, a peace corps assigned in the barrio of the accused, that she and Remy Diño were together at the time the alleged crime was committed.

V.

The lower Court finally erred in convicting the accused Remy Diño of the crime of rape with homicide and imposing three (3) penalties of reclusion perpetua."

The errors assigned are bereft of support from the evidence on record.

- It is a fact that all the witnesses, both of the prosecution and the defense testified before then Judge Castrense C. Veloso whose resignation, however, was accepted by the President before he could decide the case. It was Judge Numeriano G. Estenzo, assigned temporarily to preside over Branch III, who eventually rendered the Decision on June 30, 1975.

Notwithstanding that circumstance,

"There is no provision of law which would preclude a Judge of the Court of First Instance from deciding a case on the basis of the oral and documentary evidence presented before the first judge who resigned from the service without deciding the case, which oral evidence was taken by a stenographer and was produced before the second judge. This rule is rooted in practical considerations. Sometimes it is an impossibility for the judge who tried the case to be the same judicial officer to decide it. The judge who tried the case may die, resign or retire from the bench before he could render judgment thereon. In that case, We find no legal impediment to his successor's continuing with the trial or rendering judgment on the basis of the evidence submitted if the trial has been terminated. It is sufficient that in such circumstances the judge, in deciding the case, must base it completely on the cold record before him, in the same manner as appellate courts when they review the evidence of the case raised to them on appeal". (Villanueva vs. Estenzo, No. L-30050, June 27, 1975, 64 SCRA 407)

While it may be that not all of the stenographic notes had been transcribed at the time the judgment was prepared, the more crucial ones were before the lower Court. Besides, the separate memoranda of the three accused, particularly that of Remy Diño, summarized the major testimonies of witnesses for both the prosecution and the defense and contained an exhaustive discussion of the facts of substance essential to the defense of the respective accused. Thus, it was on the basis of the evidence of both the prosecution and the defense, with reference to stenographic notes when called for, that Judge Estenzo rendered his Decision.

- No error was committed by the Court in giving weight and credence to the testimony of the only prosecution eye witness Roberto Dumancas, a ten-year old boy. He had positively identified appellant Remy Diño as one of the malefactors. The error committed in identification of the two other accused was because he did not know them by their full Christian names but only by their nicknames. He had also described clearly and straightforwardly the particular acts performed by each accused in the commission of the crime. That said witness was familiar with the three accused cannot be doubted, all three being from the same barrio as the witness himself.

Roberto's failure to inform his parents of the incident is not "contrary to human conduct", as claimed. He could have been too shocked at what he had witnessed, or he may have had certain inhibitions. He did reveal the incident, however, to a relative "Fe", also from the same barrio, on the same day of the incident (t.s.n., p. 28, May 3, 1974).

Roberto's age should not militate against his competence, the records of the proceedings showing that the Court found him a reliable and trustworthy witness who was fully cognizant of the importance of an oath and of the significance of telling the truth (Decision, pp. 14 & 15).

- The extra-judicial confession of appellant Remy Diño, executed on November 19, 1973, is challenged on the ground that the same was secured through force and intimidation. It narrated in detail how, when the victim passed by the rice paddies at about 1:00 o'clock P.M., more or less, of November 13, 1973, she was "immediately caught by Badong (Salvador Dequito) and he then kissed her"; that appellant himself took hold of her two arms; and thereafter the three of them (Salvador Dequito, Alex Dequito and he) took turns in having carnal knowledge of the victim; that appellant did so only once; that the victim was strangled by Salvador so that "she cannot inform the authorities"; and that only the three of them did "the raping and killing of Miss Melinda Boglosa".

While the evidence negates that the confession was extracted by force and intimidation, nevertheless, having been obtained after the effectivity of the 1973 Constitution on January 17, 1973, it is inadmissible in evidence, as the accused was not clearly and unequivocally informed of his constitutional rights to remain silent and to counsel, in violation of the prescribed safeguards in Section 20, Article IV of the 1973 Constitution.[1] The confession was merely prefaced with the perfunctory statement that "the one making a sworn statement was informed of his right under our Constitution and the reason for this investigation", without more.

Be that as it may, the testimony of the sole eyewitness, Roberto Dumancas, sufficiently establishes the guilt of appellant, which testimony is corroborated in its material aspects by the postmortem findings and the testimony of the medico-legal officer in respect thereto.

- No error was committed by the lower Court in not giving credence to the testimony of Kathleen Hustace, a Peace Corps Volunteer assigned in the barrio where the crime was committed. She testified that at about the time the crime was perpetrated, she and Remy Diño were together feeding birds. Even granting it to be so, that does not exclude the possibility that Remy Diño could have slipped out either before or after the feeding of the birds in order to commit the crime. Kathleen herself testified that she had to leave around 1:00 P.M. of that fateful day in order to make an appointment.

To establish alibi, an accused must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission (People vs. Urgel, No. L-34851, February 25, 1985, 134 SCRA 483). In this case, the place where Kathleen Hustace and Remy Diño were feeding the birds was in the same barrio where the crime was perpetrated.

- The lower Court correctly rendered a verdict of guilty. The elements of rape - that of having carnal knowledge of a woman by using force and depriving her of consciousness - are indubitably present. Eyewitness Roberto Dumancas testified that while he was herding his carabao, he saw the victim approaching from a distance; suddenly Salvador Dequito pulled her down causing them both to fall to the ground; appellant Remy Diño then held the hands of the victim while Jose Dequito held her two legs; thereafter Salvador Dequito took off his pants and underwear and had carnal knowledge of the victim; and that thereafter, Jose Dequito and Remy Diño took turns abusing her.

The elements of the crime of Homicide are likewise attendant - namely, that a person is killed; that the accused are the authors of the killing without justifiable reason; and that the accused had the intention to kill, which is usually the case when death results because the law presumes that they had intended the material consequences of their unlawful act.

Citing again from the testimony of Roberto Dumancas, he declared that when the three accused were through abusing the victim, Salvador Dequito choked her, and with an engine cranker, struck her on the head; subsequently, the trio dragged the victim and pushed her head into the rice paddy, which was knee-deep with water. The medico-legal officer corroborated this testimony in his Necropsy Report where he disclosed that the victim had been abused and that she died of asphyxia by strangulation and drowning. The fact that said officer found no wound on the forehead does not necessarily imply that the victim was not so struck as a gaping wound need not necessarily have resulted.

Finally, the three penalties of reclusion perpetua were properly imposed. It is evident that conspiracy attended the perpetuation of the crime of Rape with Homicide by the three accused. By their contemporaneous acts it was evident that they were acting in concert and pursuing the same objective and design - that of raping the victim and killing her. The act of one is the act of all and each of the conspirators must be held liable for each of the felonious acts committed in conspiracy (People vs. Beltran, Nos. L-37168-69, September 13, 1985, 138 SCRA 521). The penalty should, in fact, be death since by reason or on the occasion of the rape, a homicide was committed (Article 335, Revised Penal Code), but with the abolition of the death penalty in the 1987 Constitution, the imposable penalty would be reclusion perpetua just the same. So that, instead of three (3) death penalties, the accused Remy Diño should suffer three (3) penalties of reclusion perpetua.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, except that the indemnity to the heirs of the victim, Melinda Boglosa, is hereby increased to P20,000.00. With one-third (1/3) of the costs against accused-appellant, Remy Diño.

SO ORDERED.

Yap, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Sec. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence.

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