

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO VIZCARRA, LEOBINO SALAMATIN, JOSE DELOS REYES AND LIBERATO FERNANDO, ACCUSED-APPELLANTS.

G.R. No. L-38859. July 30, 1982

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PER CURIAM:

Review of the judgment rendered by the Court of First Instance of Rizal, imposing the death sentence upon Danilo Vizcarra, Leobino Salamatín, Jose delos Reyes and Liberato Fernando for the crime of rape with homicide, the decretal portion of which reads as follows:

"WHEREFORE, the Court finds that the prosecution has proven the guilt of the accused DANILO VIZCARRA, LEOBINO SALAMATIN, JOSE DELOS REYES and LIBERATO FERNANDO of the crime charged in the information beyond reasonable doubt and, in accordance with the provision of Article 335 of the Revised Penal Code as amended by Republic Acts Nos. 2632 and 4111, the Court is constrained to impose to each of them the supreme penalty of death by electrocution as their penal sentence and to indemnify, jointly and severally, the heirs of the late Erlinda Manzano in the amount of P12,000 and to pay the costs. x x x x"

The

victim Erlinda Manzano was at the time of the incident a fourteen-year old maiden, employed as a waitress at the Lily's Restaurant in Novaliches, Quezon City. When she failed to come home in the night of June 25, 1969, her parents set out to look for her at her place of work and the houses nearby. Having failed to find her, they reported her disappearance to the Quezon City Police Department. Two days later, the lifeless and almost naked body of Erlinda[1] was found in a grassy spot of a vacant lot behind an ice plant at Dumalay Street, Novaliches, Quezon City. The deceased was lying on her back with a piece of clothing material tied around her neck. Dr.

Ernesto Baylon, medico-legal officer of the Quezon City Police Department, who first examined the body of the victim, testified that the protrusion of the deceased's tongue was the result of excessive pressure exerted upon her neck and that the probable cause of death was strangulation.[2] Dr.

Ernesto Gimenez, medico-legal officer of the NBI, to whom the victim's body was referred for autopsy, attributed the cause of death to "asphyxia by ligature strangulation." He testified that the ligature used was a "piece of cloth or what appears as a portion of a 'sando' shirt"; that the ligature was still tied around the victim's neck when he performed the autopsy; that his findings on the genitals "are compatible with sexual intercourse with men and that the intercourse was done in a forceful manner or not with the cooperation of the victim"; that the left breast of the victim was bitten, as evidenced by the presence of deep teeth marks; and that the abrasion on the forearm, posterior lateral aspect, was produced by fingernails.[3] Dr.

Ernesto Brion, assistant director of the NBI medico-legal division, confirmed said findings. Dr. Brion added that "the laceration at the 7:00 o'clock position of the victim's genitals was the result of sexual intercourse committed before death or within five to ten minutes immediately after death." [4]

Elements of the Quezon City Police and the PC Criminal Investigation Service (CIS) launched a massive manhunt

for the malefactors. Acting on confidential reports received by said law officers, they took into custody Leobino Salamatin, Jose delos Reyes, Liberato Fernando, Patricio Verdote, Rogelio Vizmanos and Rodolfo Bagtasos; and in the course of their investigation, these suspects gave written statements to CIS agents Fernando Perucho, Arthur Sison, Modesto Garcia and Francisco Novero, wherein they admitted having taken turns in raping the victim. They pointed to appellant Danilo Vizcarra, then at large, as the one who strangled Erlinda to death. Their respective statements were signed and sworn to by each of them before Assistant Fiscal Arsenio Santos of Quezon City. On

August 2, 1969, a verified complaint jointly signed by the victim's father, Patricio R. Manzano, and Assistant Fiscal Miguel F. Halili, Jr. was filed in the Court of First Instance of Rizal (Quezon City) charging Danilo Vizcarra, Rogelio Vizmanos, Leobino Salamatin, Jose delos Reyes, Liberato Fernando, Patricio Verdote and Rodolfo Bagtasos with the crime of rape with homicide. The complaint alleged that the accused conspired and confederated together and mutually helped one another in having carnal knowledge one after the other of Erlinda Manzano against her will, as well as in killing her, and that in the commission of the offense, the following aggravating circumstances concurred:

"(1) nighttime purposely sought to facilitate the commission of the offense;

"(2) a

dvantage was taken of superior strength and means were employed to weaken the defense; and

"(3) the wrong done in the commission of the crime was deliberately aggravated by causing other wrong not necessary for its commission."

Rodolfo Bagtasos was discharged and utilized as state witness. At the commencement of the trial, Danilo Vizcarra was still at large; but after he was arrested, the prosecution presented its evidence anew against him.

After due trial, the lower court acquitted Patricio Verdote and Rogelio Vizmanos, but found Danilo Vizcarra, Leobino Salamatin, Jose delos Reyes and Liberato Fernando guilty beyond reasonable doubt of the offense charged and, as aforesated, imposed on each of them the supreme penalty of death.

Hence, this mandatory review.

At the trial, state witness Rodolfo Bagtasos substantially testified that at about 9:00 in the evening of June 25, 1969, he, Patricio Verdote, Leobino Salamatin, Rogelio Vizmanos and Liberato Fernando went to a vacant lot located behind an ice plant at Dumalay Street, Nova-liches, Quezon City, where they awaited the arrival of Danilo Vizcarra and Jose delos Reyes, who, in accordance with their prior agreement, were to bring Erlinda to that appointed place; that when Vizcarra and Delos Reyes arrived with the girl, they brought her to an unlighted, grassy place and pushed her to the ground; that Vizcarra removed her panty and then took off his clothes; that whereupon he ravished the girl while the witness (Bagtasos) and Liberato Fernando pinned down her legs, and Patricio Verdote and Rogelio Vizmanos, her arms; that after Vizcarra had satisfied his lust, Jose delos Reyes took his turn, followed by witness Bagtasos; that while Bagtasos was on top of her, he noticed that one of the victim's nipples was bleeding, leading him to surmise that Jose delos Reyes had bitten it; that after he was through, Patricio Verdote, Leobino Salamatin, Rogelio Vizmanos and Liberato Fernando took turns in that order in ravishing the victim, as the others alternated in holding her arms, legs and hair and in covering her mouth to prevent her from shouting; and that afterwards Danilo Vizcarra tied around the girl's neck a string that looked like a plastic rope, which he pulled backward (binigiti) so that the tongue of the girl protruded out; and that upon seeing this, he (witness Bagtasos) and his companions ran away, leaving Vizcarra at the scene of the crime.

Appellants disclaimed having participated in the perpetration of the crime charged and invoked the defense of

alibi, which the trial court summarized as follows: [5]

"According to accused Danilo Vizcarra, he drove a certain Mr. Sergio Peña to the doctor at about nine o'clock in the evening of June 25, 1969 and from the house of the doctor at San Francisco Del Monte, Quezon City, they proceeded to Manila to buy medi-cine and they stayed there up to twelve midnight; Jose delos Reyes claimed that from five o'clock in the afternoon to twelve midnight of said date, he was with his friend-driver, 'Manny', who was plying the Blumentritt-Novaliches route; Liberato Fernando alleged that he was watching T.V. from eight o'clock in the evening of said date in Sta. Cruz, Novaliches, Quezon City after which he went home after eating in the place of Salamatín; while the accused Leobino Salamatín claimed that at about four o'clock in the afternoon of same date, he was with Leonardo Recuenco in buying palanca forms and clothing materials in Manila after which they returned to Novaliches at about seven o'clock in the evening and stayed in the place of Rosita del Rosario for about three hours before finally going home."

The trial court correctly rejected the appellants' alibi, and it explained why:

"x x x the defense of alibi inter-posed by the aforementioned accused cannot serve to overcome the clear, explicit and positive identification made of the said accused by state witness Rodolfo Bagtasos (U.S. vs. Hudieres, 27 Phil. 45; Peo. vs. Tatlonghari, L-22094, March 28, 1969, 27 SCRA 726; Peo. vs. Tapitan, L-21492, April 25, 1969, 27 SCRA 959). It is well settled that alibi is one of the weakest defenses that can be resorted to by an accused (Peo. vs. Dela Cruz, 76 Phil. 601; Peo. vs. Bondoc, 47 O.G. 4128; Peo. vs. Zapata, L-11074, Feb. 1960) for the reason that 'oral evidence of alibi is so easily manufactured and usually so unreliable that it can rarely be given credence' (Peo. vs. Badilla, 48 Phil. 718; People vs. De Asis, 61 Phil. 384; Peo vs. Estacio, L-11430, Jan. 30, 1960). Moreover, it has been sufficiently established by the evidence that at the time and date in question, the accused Danilo Vizcarra, Leobino Salamatín, Jose Delos Reyes and Liberato Fernando were residing in or within the vicinity of Sta. Cruz, Novaliches, Quezon City where the crime was committed and that on the parti-cular time and date charged in the information, the said accused were not so far a distance as to preclude the possibility of the said accused's presence at the locus criminis (People vs. Manabat, 100 Phil. 603) especially considering the available means of travel (Peo. vs. Aparato, 80 Phil. 199) open to them or particularly to accused Jose delos Reyes, who was supposed to be on board a passenger vehicle plying the Blumentritt-Novaliches route, and accused Danilo Vizcarra, who claimed that he was then driving a Lambreta motorcycle.

"Moreover, it has been held that to establish an alibi, a defendant must not only show that he was present at some other place about the time of the alleged crime, but also that it was impossible for him to have been at the place where the crime was committed, either before or after the time he was at such other place (U.S. vs. Oxiles, 29 Phil. 587; Peo. vs. De Guzman L-13340, April 30, 1960)."

Appellants Salamatín, Delos Reyes and Fernando further assail the admissibility of their respective extrajudicial statements[6] on the ground that they were extracted by the CIS agents through force and intimidation. The circumstances revealed by the records fail to support appellants' posture.

As heretofore pointed out, appellants admitted in their respective statements that they took turns in ravishing Erlinda. Their responses to the questions of the investigators were so candid and informative as to indicate the lack of any extraneous pressure on their mind. In Exhibit D, Liberato Fernando stated the order in which he and his co-appellants took turns in debauching the victim:

"27. T - Sino sa inyo and unang gumahasa kay Erlinda Manzano?

S - Una po si Danilo Vizcarra.

"28. T - Sino ang pangalawang gumahasa kay Erlinda Manzano?

S - Si Jose delos Reyes po and nata-tandaan kong pangalawa nguni't hindi ko po sigurado.

"29. T - Ikaw pang-ilan ka sa mga kasamahan mong gumahasa kay Erlinda Manzano?

S - Pang-apat po.

"30. T - Sino ang sinundan mong gumahasa kay Erlinda Manzano?

S - Ang natatandaan ko po ay si Rodolfo Bagtasos."

Appellant Delos Reyes, in Exhibit G, related his participation as follows:

"16. T - Noong mga sandaling iyon, ano ang hitsura ni Erlinda kung iyong natatandaan?

S - Nakapanty na lamang si Erlinda at nakapangitaas na damit na lamang.

"17. T - Ano pagkatapos ang iyong ginawa?

S - Naghubad ho ako ng pantalon at salawal at si Erlinda ay aking ginamit.

"18. T - Noong kasalukuyang ginagamit mo si Erlinda, ano naman ang kanyang kilos?

S - Wala ho, basta umiiyak lamang siya."

Previous sexual activity indulged in by Vizcarra and Delos Reyes was also disclosed by the latter:

"59. T - Sinong babae ang inyong niyari o ginamit noon kung natatandaan mo?

S - Ang alam ko lamang ay Cely ang kanyang pangalan at doon ko ho siya nakuha sa may Balintawak, Quezon City.

"60. T - Saan lugar ninyo niyari o ginamit si Cely?

S - Doon ho sa Villaverde, Novaliches, Quezon City sa isang lugar na walang bahay at kagubatan.

"61. T - Sino-sino ang yumari o gumamit doon kay Cely na sinasabi mo?

S - Kaming dalawa lamang ho ni Danny Vizcarra."[7]

And appellant Salamatín gave his version thus:

"28. T - Sino ang nakita mo na may hawak kay Erlinda?

S - Ang natatandaan ko po ay sila Delos Reyes at Fernando.

xxx xxx xxx

"40. T - Ng ikaw ay gumamit, naghubad ka ba?

S - Pantalong at carsuncillo ay aking hinubad, inililis ko na lamang and aking Orlon T-shirt na ngayon ay suot ko.

"41. T - May nakahawak bang ibang kasamahan mo kay Erlinda nang gumamit ka?

S - Wala na po, nagiisa na lamang ako.

"42. T - Ano ang ginawa ni Erlinda ng gumagamit ka na?

S - Hindi na siya kumikibo, libreng libre na ako sa paggamit sa kanya.

"43. T - Iyo bang natatandaan kung may sugat o may parte ng katawan ni Erlinda na may bahid dugo ng ginagamit mo ito?

S - Meroon po, ang kanyang ari ay dumudugo, basa at nang ako ay tapus na at makauwi, nakita ko na may dugo ang aking karsuncillo at yong kamay ko."[8]

In Exhibit H, Salamatín further attested to the fact that, immediately after he and his companions were taken into custody, i.e., before they had given their statements to the CIS officers, a televised interview was held in the office of Lt. Col. Pelagio Perez, then chief of the CIS, and that in the presence of the latter and of several press reporters, he and his co-appellants spontaneously admitted that they were the ones who raped Erlinda Manzano. Thus, the written confessions they gave on July 18, 1969 merely reaffirmed their prior public admissions of culpability.

It further appears that appellants, at the request of the city mayor of Quezon City, were physically examined by Dr. Ernesto Baylon, medico-legal officer of the Quezon City Police Department. The latter's findings that he "did not find any visible and palpable sign of injury" on the persons of the appellants[9] belie their claim of maltreatment and torture.

But even disregarding the appellants' extrajudicial confessions, the testimony given in open court by state witness Rodolfo Bagtasos, which the lower court found to be "credible, clear and straightforward," affords adequate basis for their conviction.

Appellants would assail the credibility of Bagtasos by pointing out what they characterized as "apparent discrepancy" between the latter's extrajudicial statement[10] and his testimony on the stand as to who held the arms and legs of the victim while his companions took turns in abusing her. The point raised undoubtedly refers to a very minor inconsistency which tends to indicate that the witness was not rehearsed. In the absence of proof that the trial court failed to appreciate significant facts and circumstances that would have altered the result of the case, We are not disposed to disturb the findings of the court below.

Appellant Vizcarra claims that insofar as he is concerned, the trial court erred in considering against him the testimony of state witness Bagtasos. He contends that before Bagtasos' testimony could be admitted against him, proof of the alleged conspiracy must first be shown by evidence other than such testimony. He cites in support thereof the provision of Section 27, Rule 130 of the Rules of Court to the effect that "the act or declaration of a conspirator relating to the conspiracy and during its existence may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act."

The argument fails to consider that Section 27 of Rule 130 applies only to an extrajudicial act or declaration of a co-conspirator, but not to the testimony given by a witness at the trial where the accused had the opportunity to cross-examine the declarant.[11] Besides, it is a familiar rule that a co-accused in a criminal case is a competent witness for or against any of his co-accused.[12]

From the evidence on record, there is not a shred of doubt as to the guilt of Danilo Vizcarra for the crime of rape with homicide. But We cannot agree with the view of the trial court that his co-appellants Delos Reyes, Fernando and Salamatín were equally responsible for the death of the victim. It is undisputed that it was Vizcarra alone who strangled the victim to death. While it is indubitable that all of them conspired and acted together in the execution of successive rapes, We find the record bereft of any evidence that it was part of their plan to do away with the victim. The mere passive presence of Delos Reyes and Fernando and Salamatín at the scene of the crime at the moment Vizcarra suddenly strangled Erlinda does not make them liable for the act of their co-accused.

Be that as it may, We see no reason to alter the penalty imposed by the trial court on said three appellants. The crime of successive rapes is punishable by the penalty of reclusion perpetua to death, under para-graph 3, Article 335 of the Revised Penal Code, as amended by Rep. Act No. 4111, which took effect on June 20, 1964:

"xxx xxx xxx.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

"xxx xxx xxx."

(Underscoring supplied).

The greater penalty - death - should be imposed, as the commission of the offense was attended by the following aggravating circumstances: (1) nighttime, appellants having purposely sought such circumstance to facilitate the execution thereof; and (2) abuse of superior strength, the crime having been perpetrated by four appellants in conspiracy with one another. None of these aggravating circumstances has been offset by any extenuating circumstance.

Since four successive offenses were charged and proved, each of them should be imposed four (4) death sentences for four distinct and separate crimes of rape. The existence of conspiracy among the appellants, the overwhelming evidence as to the nature and the number of the crimes committed, as well as the attendance of the aforementioned aggravating circumstances, fully justify the imposition of four death penalties. As this Court said in *People vs. Peralta*:^[13]

"The imposition of multiple death penalties, far from being a useless formality, has practical importance. The sentencing of an accused to several capital penalties is an indelible badge of his extreme criminal perversity, which may not be accurately projected by the imposition of only one death sentence irrespective of the number of capital felonies for which he is liable. Showing thus the reprehensible character of the convict in its real dimensions, the possibility of a grant of executive clemency is justifiably reduced in no small measure. Hence, the imposition of multiple death penalties could effectively serve as a deterrent to an improvident grant of pardon or commutation. Faced with the utter delinquency of such a convict, the proper penitentiary authorities would exercise judicious restraint in recommending clemency or leniency in his behalf.

"Granting, however, that the Chief Executive, in the exercise of his constitutional power to pardon (one of the presidential prerogatives which is almost absolute) deems it proper to commute the multiple death penalties to multiple life imprisonments, then the practical effect is that the convict has to serve the maximum forty (40) years of multiple life sentences. If one death penalty is imposed, and then is commuted to life imprisonment, the convict will have to serve a maximum of only thirty years corresponding to a single life sentence."

WHEREFORE, the judgment under review is hereby modified in the sense that each and everyone of the appellants, namely: Danilo Vizcarra, Leobino Salamatin, Jose delos Reyes and Liberato Fernando, is hereby sentenced to four (4) death penalties. The judgment is affirmed in all other respects, with costs against the appellants.

SO ORDERED.

Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, and Relova, JJ., concur. Abad Santos, J., in the result. Fernando, C.J., did not take part. Gutierrez, Jr., J., on leave.

[1] Exhibit B.

[2] Exhibit C.

[3] TSN, pp. 6-14, Oct. 14, 1969.

[4] TSN, pp. 7-16, Nov. 17, 1970.

[5] pp. 41-42, lower court's decision.

[6] Exhibits D, G, H.

[7] Exhibit G.

[8] Exhibit H.

[9] Exhibit 40.

[10] Exhibit A.

[11] People vs. Serrano, 105 Phil. 131; People vs. Nierra, 96 SCRA 1.

[12] U.S. vs. Grant, et al., 18 Phil. 124.

[13] 25 SCRA 759.

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