

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERLINDO BALUAN Y LAGUTAN, ACCUSED-APPELLANT.

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision[1] dated February 27, 2009 of the Regional Trial Court, First Judicial Region, Branch 49, Urdaneta City, Pangasinan, in Criminal Case No. U-10719 for Murder entitled “People of the Philippines, Plaintiff, vs. Erlindo Baluan y Lagutan, John Doe and Peter Doe, Accused.”, the dispositive portion of which reads:

“WHEREFORE, the prosecution having satisfactorily proved beyond reasonable doubt the guilt of the accused ERLINDO BALUAN y LAGUTAN as charged, the Court hereby convicts him for the crime of MURDER qualified by cruelty and abuse of superior strength and sentence him to suffer the extreme imposable penalty of RECLUSION PERPETUA, to indemnify the heirs of the deceased JUVELYN CABICO in the following amounts: Php32,860.00 for actual damages, Php50,000.00 for the death and P50,000.00 for moral damages; and to pay the costs.

SO ORDERED.[2]”

The facts are:

On August 22, 2000, an Amended Information[3] was filed charging accused-appellant Erlindo Baluan y Lagutan (Baluan for brevity) together with two (2) unidentified men who are still at large, for Murder of Juvelyn Cabico, a minor, the accusatory portion of which reads:

AMENDED INFORMATION

“xxx That on or about January 23, 2000 at or along the banks of the Mitura Creek at Brgy. Camantiles, Urdaneta City and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, treachery, cruelty and abuse of superior strength conspiring with one another, did then and there willfully, unlawfully and feloniously hold, box and tie around the neck a plastic belt and submerged/drowned JUVELYN C. CABICO, a minor, 13 years old[4], in the Mitura Creek by tying said plastic belt to a staked piece of bamboo which caused her instantaneous death, to the damage and prejudice of her heirs.

CONTRARY to Art. 248, Revised Penal Code, as amended by R. A. 7659. xxx”

On December 4, 2001, accused-appellant Baluan filed a Motion for Bail[5] which the lower court granted.[6] He was allowed to post bail in the amount of Php200,000.00.[7]

Accused-appellant Baluan's arraignment was deferred[8] until after the resolution[9] of his Motion for Reinvestigation.[10] On February 22, 2001, he was finally arraigned and pleaded “not guilty” to the offense charged.[11] At the Pre-trial Conference held on February 28, 2001, the parties did not enter into any stipulation, thus upon joint motion of the counsels, the pre-trial conference was terminated.

Thereafter, trial ensued.

The prosecution presented Cipriano Cabico, Jr., NBI Special Investigator Deogenes Norlo T. Galang, Jonathan Cabico, Jerry Cabico, SPO3 Nicomedes Antonio, Jr., Dr. Ramon Gonzales, Jr. and Dr. Ronald R. Bandonill, as witnesses.

Cipriano Cabico, Jr. (Cipriano for brevity) testified[12] that: he is the father of the victim, Juvelyn Cabico (Juvelyn for brevity); he knows accused-appellant Baluan because he passes by Roel's Pancit Canton, a noodle factory, "pansitan" in Barangay Camantiles, Urdaneta City, Pangasinan, where the accused-appellant Baluan works; on January 23, 2000, he was in the farm located at the south of Urdaneta City, which is about four (4) kilometers away from his house in Barangay Camantiles; when he arrived home at around 5 o'clock in the afternoon he learned from his mother that his daughter, Juvelyn, had not been back from Mitura river where she was gathering "bennek" (fresh shell fish); Juvelyn was accompanied by her cousin, Benny Flores, so he looked for him in the neighborhood to ask him where his daughter was; when he could not locate Juvelyn, he asked his nephews and other neighbors to help him look for her at the Mitura river; while looking for Juvelyn at around 6 o'clock in the evening, he saw his son Jonathan Cabico (Jonathan for brevity) crying, he could not talk and appeared to be very frightened; they continued to search for Juvelyn until they found her beside the riverbank; the water in the river was breast deep; when he saw her, she was in a lying position with both of her arms raised and her chin up; a black plastic belt without a buckle, which was around half a meter long, was tied to her neck; his nephews, Joel Cabico (Joel for brevity) and Jerry Cabico (Jerry for brevity), were the first ones who saw her in the river; when they saw her, he called for the Barangay Officials but they did not want to see her, so he went to the police; a policeman named Peralta examined his daughter's body and took the belt, while Dr. Ramon Gonzales did the autopsy; thereafter, he went to the police station everyday to follow up on the autopsy report,[13] but he was unable to secure a copy until his cousin, a Kagawad, obtained a copy for him; he did not believe the results of the initial autopsy, thus he referred the case to the National Bureau of Investigation (NBI) in Dagupan for further investigation; when the NBI investigated the case they went to the crime scene and the noodle factory; the NBI asked the witness to point to the suspect, and another autopsy on the body of the victim was conducted; the Autopsy Report[14] of the NBI concluded that his daughter was still alive when she was submerged in water; all of his statements were reduced in writing through an affidavit which he executed; the wake of his daughter lasted for thirteen (13) days; he spent a total of Php 30,860.00 for the wake and funeral services; the total funeral services cost around Php11,000.00; he paid an additional Php2,000.00 for the embalming of the corpse; the other expenses incurred during the wake are enumerated in the list of expenses prepared by his sister Remedios; the death of his daughter caused him extreme pain, and it is up to the court to determine an amount sufficient to compensate for such loss.

In the course of his direct examination, witness Cipriano was able to identify accused-appellant Baluan in open court.[15] He presented and identified[16] the Birth Certificate[17] of Juvelyn. He identified[18] the Sworn Statement[19] he executed before the Office of the NBI in Dagupan. Lastly, he presented the receipts[20] and list of expenses[21] to support his claim for the expenses which he incurred during the wake and for the funeral services of his daughter Juvelyn.[22]

During his cross-examination, he confirmed[23] that: he was in the farm when the incident happened; his statements on the actual incident were gathered from his son, Jonathan, the eyewitness in this case; his description of his daughter's appearance was based on what he saw after she was lifted from the water; the body of his daughter was discovered on January 23, 2000; on the same date, police officers from Urdaneta City came and investigated the case; he neither executed a sworn statement before the police in Urdaneta City nor before any Barangay Official because they did not write down his statements, but he reported the incident; he only gave his sworn statement on January 30, 2000 before the NBI; he was unable to talk to his son Jonathan regarding the incident on January 23, 2000, in fact they only talked about it three (3) days after it happened; the list of expenses

incurred during the wake was prepared by his sister; the receipt for the embalming fee in the amount of Php2,000.00 was belatedly obtained to show proof that he paid said additional amount.

On re-direct examination, he alleged[24] that: he paid the additional embalming fee in the amount of Php 2,000.00 after his daughter's funeral; he reported the incident to the police and the Barangay Officials, but he did not execute any sworn statement before them because he was still following up the release of the autopsy report of his daughter.

During his re-cross examination, he reiterated[25] that: he was following up the release of his daughter's autopsy report and when he was able to secure a copy, he brought it to the NBI; he reported the incident to the police and the Barangay Officials because he knew that they were the proper authorities who could help him file the necessary charges against the one responsible for his daughter's death; however, he did not give his sworn statement to them because they were not paying attention to him when he was requesting for the autopsy report of his daughter.

NBI Special Investigator Diogenes Norlo T. Galang (SI Galang for brevity), the investigating officer from the NBI Dagupan who was assigned to the case, testified[26] that: he has been SI at the NBI since 1992 and assigned at the NBI, Dagupan since 1997; one of his functions/duties as a SI is to investigate cases assigned to him by his immediate chief; on January 30, 2000, he received a report from private complainant Cipriano Cabico regarding the incident as indicated on the Complaint Sheet[27] duly executed by the latter; initially, private complainant Cipriano made a report about an alleged rape with homicide committed against his daughter, Juvelyn; after the case was assigned to him by their Provincial Chief, he proceeded to the crime scene near the Mitura Bridge in Barangay Camantiles, Urdaneta City; he was accompanied by their former Chief, personnel and technical people; upon arrival at the crime scene, Dr. Bandonill conducted an autopsy on the body of Juvelyn at the latter's residence; their technical people on the other hand, proceeded to the crime scene to gather physical evidence and found only a "suspected pubic hair" which they documented and photographed;[28] simultaneously, while the technical people were gathering physical evidence, they were conducting interviews with the witnesses; they interviewed the brother of the victim, Jonathan, who narrated to them that he saw two (2) men carrying his sister across the bank of the river while another, a much older man, was trying to help his companions to bring his sister out of the water, and when the older man saw him, he chased him and threatened to kill him; Jonathan also told them that he can identify this old man because he usually sees him on his way to and from school; after taking the statement of Jonathan[29], they also took the statement of the victim's father, Cipriano[30], and the statement of the brothers, Joel and Jerry[31]; it was at this time when they were gathering information and conducting interviews with the relatives of the victim and other potential witnesses, when one of the persons who fished out the victim from the water, handed him the "dired kogon" or the alleged peg on which the belt around the neck of the victim was tied; this peg was then placed in their evidence room and was marked accordingly; when they finished their investigation, they coordinated with the Philippine National Police (PNP) in Urdaneta City and wrote them a letter requesting[32] for the turnover of the other physical evidence which they gathered relative to the case; as per their request, the PNP in Urdaneta City submitted photos of the crime scene, the rope found/tied on the neck of the victim, the Police Report, and other related documents to the case; after gathering all the evidence, they conducted a record check[33] on all those persons suspected to have committed the crime; the result of the record check[34] was forwarded to their command office, which was later on filed in the case folder; thereafter, when they received the result of the autopsy[35] from their Medico-Legal, the case was filed with the Office of the Prosecutor.[36]

On cross-examination, he explained[37] that: the alleged peg which was handed to him was noted in the statement on record of the case; the statement referring to the peg was the word "nakapadol" but the fact that the peg was

actually handed to him was not expressly mentioned in the records of the case.

During the course of his direct examination, Jonathan identified[38] his Sinumpaang Salaysay[39] and identified accused-appellant Baluan in open court.[40] He testified[41] that: Juvelyn was his older sister who died on January 23, 2000; he knows accused-appellant Baluan because he often saw him at the “miki” (noodle) factory located beside the Mitura river when he passed by on his way to school; on January 23, 2000, at around 2 o'clock in the afternoon he was in their house watching T.V.; around the same time, his sister Juvelyn, together with their cousin Benny Flores, was at the Mitura river to gather “bennek” (shellfish); said river was around 200 meters away from their house; at around 3 o'clock in the afternoon, their grandmother, Nanay Hipolita, sent him to fetch his sister at the Mitura river; when he arrived at the Mitura river, he saw two (2) men pulling Juvelyn near the bank of the river going towards the bamboo trees; while the two (2) men were pulling Juvelyn, he saw accused-appellant Baluan mauling her, hitting her stomach, lips, and the left side of her head, which caused her to fall down on the ground; after his sister fell down, the two (2) men tied a black belt without a buckle around her neck; after the belt was tied around his sister's neck, he ran because accused-appellant Baluan started chasing him; when accused-appellant Baluan did not catch him, he hurled mud at him and threatened to kill him if he revealed what happened; when he arrived home he did not tell anyone about the incident because he might be killed if he reported the same; he saw his dead sister at the river that evening, lying down with her two (2) hands bent towards her; the next day, January 24, 2000, at around 2 o'clock in the afternoon, police came and he told them what he saw; the police accompanied him to the noodle factory so he can point to them accused-appellant Baluan; at the factory, he failed to point to the latter because he (Jonathan) ran to the police vehicle when he saw that accused-appellant Baluan was staring at him; and, when they called for him, he went back and pointed to him.

On cross-examination he admitted[42] that: he only went back to the river when the body of his sister was recovered; after the incident, he was able to take his dinner, slept and woke up at the usual time he sleeps and wakes up, and he still went to school; his narration in court is not the same as those found in his Sinumpaang Salaysay; the NBI showed him only the picture of accused-appellant Baluan for identification of the suspect; at the noodle factory, no one told or instructed him to point to accused-appellant Baluan; when he pointed to accused-appellant Baluan, the latter was not alone; he was thirteen (13) years old at that time and he already knew what is right and what is wrong; he knows that being obedient to his parents is good and he does not want to disappoint them, when they ask him to do something, like testifying the way his parents want him to testify.

On re-direct examination, he stated[43] that: he only recognized one of the men and that is accused-appellant Baluan because he was the one who boxed his sister; the statements that are not found in his Sinumpaang Salaysay were mentioned to the investigator; when he went to the noodle factory with the police, he pointed to accused-appellant Baluan because he was the one who really boxed his sister; and, when he testified, his father did not tell him what to say.

On re-cross examination, he stated[44] that: his statements in his Sinumpaang Salaysay were prepared at the NBI office in Dagupan; as he was giving his statements, they were being written down but not all of his statements were included in the Sinumpaang Salaysay; he did not complain even if not all his statements were included; it was not the NBI but the police who did not include all his statements.

Jerry identified[45] the “Pinagsamang Salaysay[46]” he executed together with his brother Joel and testified[47] that: he knows the victim, Juvelyn, because they were second cousins; on January 23, 2000, at around 5 o'clock in the afternoon, he was at home having a drinking spree with his cousins Joselito Cabico and Edwin Sabado; around the same time, their uncle, Cipriano, came and told them that his daughter, Juvelyn, was missing; then he went to the Mitura creek together with his cousins, his brother and Cipriano to look for her; he and his companions conducted their search in the river; they looked for her until 6 o'clock in the evening but they did not find her, so

they stopped and ate their supper; around 7 o'clock in the evening, they went back to the Mitura creek and continued their search using their flashlights and lamps; while they were searching the edge of the river ("kinakapa-kapa"), his brother Joel allegedly touched the leg of their cousin, so he called his attention; he was thirteen (13) meters away when Joel called him; he went near Joel and attempted to carry Juvelyn's body out of the river using his two (2) hands (witness raising his hands upward); before he carried her, he noticed that the latter's face was submerged in water; it was difficult to lift her at first so he exerted some force to carry her, then he saw a belt around her neck and the belt was tied on a peg which was embedded under the water; the peg looked like a "Tanubong" with a bamboo; a "Tanubong" is similar to a "pat-pat" (stick); he recognized the peg when it was presented to him because he was the one who pulled it from the river; the belt tied around her neck was an old black belt; after he pulled her from the water, he carried her to the river bank, and noticed that the side of her lips was cut and she had a lump on the left side of her forehead; from there, Joel and uncle Cipriano carried her body to the latter's house.

On cross-examination, he stated[48] that: he executed his sworn statement on February 1, 2000 at 11 o'clock in the morning at the NBI; this sworn statement is the only affidavit he executed in relation to the case; he did not make any report to the police in Urdaneta City or to any Barangay Officials; he only reported the incident to the victim's father; the belt was tied around the victim's neck and it was not broken; he did not remove the belt; the body was carried home by his uncle Cipriano and his brother Joel in the same manner that he lifted the body with the belt still tied on the victim's neck; around 7:30 o'clock in the evening, the body of the victim was already at the house; he arrived at the victim's house around 8 o'clock in the evening, a policeman whose family name is Peralta, was there and he got the belt; and, it was Cipriano who follow up the case with the police.

SPO3 Nicomedes Antonio, Jr., (SPO3 Antonio for brevity), the desk officer on duty at the Urdaneta Police Station who received the report regarding the incident, testified[49] that: he has been connected with the PNP in Urdaneta City since 1997; he serves as a desk officer for the PNP; he reported for duty on January 23, 2000 when at around 8:45 o'clock in the evening, he received a radio report from Kagawad Lebaste of Barangay Camantiles regarding the discovery of the body of a dead female teenager, sprawled on the riverbank of said place; SPO1 Peralta was dispatched to act on said report; and, said radio report was also put in writing as per Complaint/Assignment Sheet.[50]

During his cross-examination, he affirmed[51] that he reduced in writing the radio report he received from Kagawad Lebaste.

Dr. Ramon Gonzales (Dr. Gonzales for brevity), the Rural Health Physician from the City Health Office of Urdaneta who conducted the initial autopsy on the body of the victim, Juvelyn, after his qualification as an expert witness, testified[52] that: the Urdaneta Police Station requested him to conduct an autopsy on the body of Juvelyn Cabico; he conducted his autopsy at the Cabanilla Funeral Homes in Urdaneta City on January 24, 2000 at around 8:35 o'clock in the morning; when he examined the body, he noticed a slightly pinkish fluid coming from the nose (sero-sanguinous discharge) and there was a punctate abrasion (an injury akin to several pin pricks) on the left temple (witness pointing at the left side of his forehead) of the victim; punctate abrasion may be incurred if a person falls down and hit some sand or a stone with a rough surface; he also observed linear abrasion on the left neck $\frac{1}{2}$ antero lateral aspect, which means that there were two (2) line marks on the left side of the neck; it is possible that such injury was caused by a small belt tied to the neck; when he opened the head, he observed that the brain did not sustain any injury; he opened the victim's chest, took out the lungs and placed it in a pail of water and it floated; this indicates that the lungs had some air; usually, a person who is alive would have air in the lungs, unlike a dead person; based on his findings, the cause of death of Juvelyn was Asphexia (which means the victim cannot breathe) due to drowning; he cannot estimate the time of death because he did not

examine the victim's stomach; and, all of his findings were written in his Autopsy Report.[53]

On cross-examination, he maintained[54] that: the cause of death was drowning; if the victim is killed by strangulation, the belt mark should be on the entire neck; and, it is possible that some rough stone could cause the abrasion on the left temple.

Dr. Ronald R. Bandonill (Dr. Bandonill for brevity), the Medico Legal Officer from the NBI corroborated the findings of Dr. Gonzales. He testified[55] that: the NBI District Office in Dagupan called the NBI Office in Baguio asking for his services to conduct an autopsy; he received this request sometime in the first week of February 2000; Atty. Teofilo Galang from NBI Dagupan then accompanied him to the house of Cipriano Cabico, in Barangay Camantiles, Urdaneta City; before he conducted the autopsy on Juvelyn's body, he asked Cipriano to sign a Certificate of Identification and Consent for Autopsy; when he examined the external appearance of the body he noted that the same was previously embalmed and had incisions because of the previous autopsy; the body was on a moderate state of decomposition; the lips and the nailbeds were cyanotic, meaning the bluish discoloration of the lips and the nailbeds indicates that the victim died of asphyxia; asphyxia means that the victim died due to lack of oxygen inside the body; there were abrasions on the left temple and left side of the neck; these abrasions may be caused by a hard blunt object coming into contact with the body; it is possible that the abrasion on the left temple may be caused by a closed fist hitting the head; the abrasions on the neck could not be caused by a belt tied on the neck nor due to strangulation; when he opened the head of the victim he noted that the remaining brain tissues showed marked congestion and the blood vessels surrounding the brain were congested and engrossed, meaning, that the brain and the surrounding blood vessels were swollen and inflamed; this indicates that the brain was subjected to trauma which caused the swelling and the inflammation; it is possible that this injury happens when a person falls; when he opened the trachea, he noticed a massive amount of dark red or dark brown mucous and there was soil specks plugging the tracheal wall, this indicates that the victim was immersed in some kind of murky fluid; the murky fluid only reached the windpipe but it did not enter the lungs; this points to the possibility that the victim was not breathing when she was immersed in the murky fluid; when he opened the chest, he saw that the lungs were contracted, crumpled and hard on palpation, the wall of the lungs were blue-purple to purple gray, the inside of the lungs were collapsed with marked redness and inflammation; the condition of the lungs suggests that the victim was either unconscious nor breathing when she was immersed in the murky fluid; the other internal organs only reacted to the asphyxia; based on his findings, the victim's cause of death is asphyxia by submersion; this means that the victim died as a result of oxygen hanger and this oxygen hanger occurred when her body was immersed in a fluid medium; and, all of these findings are included in his Autopsy Report.[56]

On cross-examination, he stated[57] that: the cause of death, asphyxia by submersion, in layman's term translates to "lack of oxygen"; it is possible that this lack of oxygen was caused by the victim's drowning; and, it is also possible that the victim was already dead when immersed in a murky fluid.

On the part of the defense, accused-appellant Baluan, Barangay Kagawad Manuel Lebaste, SPO4 Mario Tajon, and Dr. Rodelia Ramos were presented as witnesses.

During his direct examination, accused-appellant Baluan denied the accusations against him and testified[58] that: he works at his brother's factory, "Roel's Pancit Canton" located in Barangay Camantiles; he has been residing and working in said factory since 1996 as a mixer of the formulas used for the pancit canton; he is married with three (3) children and his family lives in Ilocos Norte, but they visit him almost every week; the charge of murder against him is false because he never killed anyone; he does not wear glasses; he was never at the Mitura river when the alleged incident happened, neither did he shout, chase, threaten nor throw anything at Jonathan to drive him away from the river bank when the latter allegedly saw him; on January 23, 2000 at around 3 o'clock in the

afternoon, he was inside his room because he was sick; from January 21, 2000 to January 23, 2000, he was suffering from hypertension so he stayed in bed and never left his residence; he has been afflicted with this illness since 1998 and he sees a regular physician, Dr. Rodelia Ramos, in her clinic for treatment; he does not personally know Jonathan and he first saw him on January 24, 2000 at around 3 o'clock in the afternoon when the police went to the factory to investigate; on said date, three (3) policemen, Andaya, Peralta and Tajon, came to the factory; Barangay Kagawad Manuel Lebaste, Chief Tanod Warlito Espiritu and Barangay Tanod Roel Fernandez were also there; the policemen asked thirteen (13) of the factory workers, including him, to remove their upper shirts and form a line, then Tajano asked Jonathan to point to the person whom he saw at the Mitura river on the day his sister died, but he failed to identify anyone; Jonathan was asked five (5) times to point to the assailant and he still failed; then, he asked permission from the police to go back to his room because he was not feeling well; he does not know Juvelyn personally and he first saw her when the NBI Officers invited him and brought him to the latter's house to see her remains; he stayed there for thirty (30) minutes and then he went home together with Roel Fernandez; eight (8) NBI officers also came to investigate on January 30, 2000 at around 5 o'clock in the afternoon; when the NBI arrived, Jonathan and his uncle Cipriano were with them; Barangay Kagawad Manuel Lebaste, Chief Tanod Warlito Espiritu and Barangay Tanod Roel Fernandez also came; the NBI officers again asked them to remove their clothes and form a line; then they asked Jonathan again to identify who among them was the one he saw at the Mitura river the day his sister died; at first, Jonathan pointed to Carlos Bautista but after his uncle shouted "he is not the one" and coached him, he pointed to him (accused-appellant Baluan); the NBI officers took photos of Jonathan pointing to him; they also asked him to give a sample of his pubic hair because allegedly Juvelyn was also raped; he gave a sample immediately to show that he had not done anything wrong; then, the NBI officers invited him to go to the house of Juvelyn and he acceded; the following day, he received a subpoena from the NBI to report to their office, but he did not go per counsel's advice; instead, his lawyer wrote a letter to the NBI on his behalf; on January 30, 2000, he already knew that he is a suspect in the case after he was pointed to as the alleged perpetrator; he was arrested on July 25, 2000; since January 30, 2000 until his arrest on July 25, 2000, he never left Barangay Camantiles because he did nothing wrong.

On cross-examination, he averred[59] that: on January 23, 2000 at around 3 o'clock in the afternoon, he was inside his room in the factory; the factory is located in Barangay Camantiles, which is about 100 meters away from the Mitura river; it takes twenty (20) minutes to walk from the factory to the Mitura river; but if he is sick he cannot walk that far because he gets dizzy; he never had any misunderstanding with Cipriano and Jonathan because he came to know them only after he was investigated on January 24, 2000; he does not know the name of Jonathan's uncle however he could identify him if he sees him again, but he was not in court; he did not execute a counter-affidavit in relation to this case; and, it is not his first time to testify on the incident because he already told his story to the police.

During his re-direct examination he was made to identify[60] the Counter-Affidavit[61] he executed in relation to the case and he explained[62] that: it is his first time to tell his defense in court but prior to testifying in court he already narrated his story to his relatives, his neighbors, the NBI officers and the police; he told the police and NBI his side of the story only after he was investigated; he has no misunderstanding with the victim's family but he was made a suspect in the case maybe because they thought he is rich but he will not give them any money.

On re-cross examination, he claimed[63] that he narrated his defense to police officer Tajon, but he can no longer recall the NBI officer to whom he told his story.

Barangay Kagawad Manuel Lebaste (Barangay Kagawad Lebaste for brevity) identified[64] the Joint Affidavit[65] he executed with Warlito Espiritu. He testified[66] that: he is a resident of Barangay Camantiles since he was born; he knows Cipriano because he is from his barangay; Jonathan and Juvelyn are Cipriano's

children; he knows accused-appellant Baluan, and he is aware that the latter is originally from Ilocos Norte; accused-appellant Baluan and his brother came to Barangay Camantiles because they put up a business there, a “pancit canton” factory; he knows that Juvelyn died of drowning at the Mitura river in Barangay Camantiles on January 23, 2000 because he was the one who responded to a call for help regarding the incident; he was present at the factory when the police officers from Urdaneta investigated the death of Juvelyn on January 24, 2000 at around 3 o'clock in the afternoon; Jonathan, who was still a young boy then, was also at the factory; during the police investigation, the workers were asked to fall in line; initially, accused-appellant Baluan was not part of the line up because he was sick, but later he was made to join; after accused-appellant Baluan joined, the police officers asked Jonathan to identify the person responsible for his sister's death but he did not identify anyone; the police asked this question to Jonathan five times but he still did not identify anyone from the line up; he was also present when the NBI officers conducted their investigation in the factory on January 30, 2000 at around 5:30 o'clock in the afternoon; Jonathan and his uncle Pedro Orma were also there; the NBI officers did the same thing the policemen did by asking the workers of the factory to form a line, and asking Jonathan to point to his sister's killer; Jonathan initially pointed to Carlos Bautista, but after his uncle shouted and instructed him, he pointed to accused-appellant Baluan; the NBI officers took a picture of Jonathan pointing to accused-appellant Baluan; they also asked the latter to give a sample of his pubic hair because they suspected that Juvelyn was raped; accused-appellant Baluan immediately complied with this request; thereafter, the NBI officers invited them to Juvelyn's house so that accused-appellant Baluan would see the latter's cadaver.

On cross-examination, he declared[67] that: he came to know that accused-appellant Baluan was charged with the murder of Juvelyn after the incident; he heard about it because they are neighbors; the incident happened on January 23, 2000 and he executed his affidavit on March 24, 2000 because that was the only time he was asked to execute said affidavit; the contents of the affidavit were written after he appeared before the Assistant City Prosecutor because the latter asked him about what happened; he was present during the police investigation; the police asked the workers to form a line once; accused-appellant Baluan was sick at that time; he knows this because the latter is from Purok 3, this is his section and he is usually aware of what is happening in that place; he does not know what accused-appellant Baluan was sick of, but he knows that he was sick and that he went to see Dr. Ramos; the NBI arrived around 5:30 o'clock in the afternoon and they went straight to the factory; Roel Fernandez and Warlito Espiritu invited him to go to the factory; Jonathan and his uncle Pedro Orma were also there; during the NBI investigation, the workers, including accused-appellant Baluan, were asked to form a line; Jonathan's uncle, Pedro Orma, was around two (2) meters away from the line up; Jonathan was beside his uncle at that time; when Jonathan was instructed by his uncle point to accused-appellant Baluan, he did not speak, neither did the NBI officers react when this happened; and, after Jonathan identified accused-appellant Baluan from the line up, they proceeded to Juvelyn's wake.

SPO4 Mario Tajon (SPO4 Tajon for brevity) is a criminal investigator from the PNP Police Station in Urdaneta City who testified[68] that: he has been assigned in Urdaneta City since 1992 and he is serving as a criminal investigator since 1995; on January 24, 2000, at around 3 o'clock in the afternoon, he and his companions Wilfredo Andaya, Reynaldo Peralta and a Barangay Kagawad went to the house of the victim, Juvelyn, in Barangay Camantiles, to follow up on her case; from there, they proceeded to the “Pansit Canton” Factory together with the victim's brother, Jonathan, to look for the possible suspect for Juvelyn's murder; in the factory, he asked the workers to form a line so that Jonathan can pinpoint his sister's killer; the line up included accused-appellant Baluan; and, despite being asked several time, Jonathan failed to identify him.

Dr. Rodelia M. Ramos (Dr. Ramos for brevity) is accused-appellant Baluan's doctor.[69] She testified[70] that: she has been treating accused-appellant Baluan for hypertension and diabetes since March, 1998; she keeps a medical record of accused-appellant Baluan; on January 21, 2000, accused-appellant Baluan went to her clinic for

consultation/medical treatment; during this check up, she did the usual vital signs monitoring and blood sugar monitoring and she noted that the patient's blood sugar was high; usually, a patient with elevated blood sugar or elevated blood pressure complain about dizziness, thus the patient is advised to take medication, rest and go on a diet; a patient who suffers from hypertension, on the other hand, is discouraged from doing heavy physical exertion like running because the increase in heart rate leads to an increase in blood pressure which aggravates the hypertension and the dizziness; since accused-appellant Baluan is afflicted with these illness, it is possible for him to experience these symptoms.

On cross-examination, she maintained[71] that: accused-appellant Baluan comes to her clinic for follow up consultation every two (2) weeks or after a month depending on her instruction for him to return for check up; accused-appellant Baluan came to her clinic on January 21, 2000 because she asked him to come back after a month from his December 20, 1999 check up; she compared the results of his check up on December 20, 1999, January 21, 2000, and February 4, 2000, and she noted that his blood pressure increased in December and February while his blood sugar was lower for the said months; a patient diagnosed with hypertension and diabetes could live a normal life as long as the blood sugar and blood pressure are controlled, otherwise these illnesses could be detrimental or even life threatening; these afflictions may even alter the day to day life of the patient because if diabetes and hypertension are not controlled, the patient could become weak and experience headache and dizziness.

After the parties rested their case, the lower court rendered the assailed decision and convicted accused-appellant Baluan of the offense charged.[72] Aggrieved, the latter moved for reconsideration[73] but his motion was denied.[74] Hence, this appeal raising the following assignment of errors:[75]

I.

THAT THE COURT A QUO ERRED IN NOT HOLDING THAT THE ALLEGED VICTIM JUVELYN CABICO DIED BY SIMPLE DROWNING WITHOUT ANY FOUL PLAY;

II.

THAT THE COURT A QUO LIKEWISE GRAVELY ERRED IN GIVING CREDENCE TO THE GLARINGLY INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PROSECUTOR'S LONE EYE WITNESS AND BROTHER OF THE VICTIM;

III.

THAT THE COURT A QUO FURTHER ERRED IN FINDING ACCUSED, CAPABLE OF COMMITTING THE CRIME CHARGED DESPITE HIS SERIOUS ILLNESS THAT WILL INCAPACITATE HIM FROM SO DOING;

IV.

THAT THE COURT A QUO LIKEWISE GRAVELY AND GLARINGLY ERRED IN FINDING ACCUSED GUILTY AS CHARGED IN THE INFORMATION FOR MURDER ALTHOUGH UNDER BROKEN CIRCUMSTANTIAL EVIDENCE, YET NO POSSIBLE MOTIVE WAS DULY ESTABLISHED NOR PROOF OF QUALIFYING CIRCUMSTANCES;

V.

THAT THE COURT A QUO FINALLY GRAVELY, GLARINGLY AND GROSSLY ERRED IN CONVICTING ACCUSED BASED ON MERE CONJECTURES, ASSUMPTIONS AND INFERENCES AND INCONCLUSIVE EVIDENCES;

VI.

THAT THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

The appeal is without merit.

The pivotal issue that needs to be resolved in this case is whether or not the prosecution was able to prove the guilt of accused-appellant Baluan beyond reasonable doubt. Here, there is only one direct evidence to implicate accused-appellant Baluan, the testimony of Jonathan. Nonetheless, the compilation of other evidence, though circumstantial, not only places him at the scene of the crime but also suggests that he and his unidentified cohorts were the perpetrators. The following circumstantial pieces of evidence are notable:

1. Jonathan Cabico testified that he recognized accused-appellant Baluan as one of the malefactors who attacked his sister at the Mitura river,[76] and in fact, he successfully identified him in open court[77];
2. Jonathan Cabico also testified that he saw the accused-appellant Baluan box his sister Juvelyn in her stomach, lips, and the left side of her head.[78] This claim is corroborated by Jerry Cabico's testimony that when he carried Juvelyn's body by the river bank, he noticed that the side of her lips was cut and that the left side of her forehead has a lump.[79] Furthermore, both Dr. Ramon Gonzales and Dr. Ronald Bandonill noted abrasions on the left temple of Juvelyn.[80]
3. Jonathan Cabico testified that he saw the two (2) unidentified companions of accused-appellant Baluan tied a belt on his sister's neck.[81] This is confirmed in the testimony of Jerry Cabico, when he claimed that he saw a belt tied to Juvelyn neck when he tried to lift her out of the water.[82] The findings of Dr. Ramon Gonzales in his autopsy also suggests that it is possible that the abrasion found on the left side of the neck of Juvelyn may be cause by a small belt tied to the neck.[83]
4. Jerry Cabico's testimony that the belt on the neck of Juvelyn was tied on a peg embedded in the water,[84] lends support to the findings of both Dr. Ramon Gonzales and Dr. Ronald Bandonill that the cause of death was asphyxia due to drowning/submersion, respectively.[85]

The combination of these aforementioned circumstances forms an unbroken chain which undeniably connects accused-appellant Baluan as one of the offenders in this case. Jurisprudence dictates that the direct evidence of the commission of the crime charged is not the only matrix wherefrom a court may draw its conclusions and findings of guilt.[86] There are instances when, although a witness may not have actually witnessed the 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 last seen with the victim immediately before and right after the commission of the crime.[87] This is the type of positive identification which forms part of circumstantial evidence.[88] In the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden.[89] Crimes are usually committed in secret and under condition where concealment is highly probable.[90] If direct evidence is insisted upon under all circumstances, the guilt of vicious felons who committed heinous crimes in secret or in secluded places will be hard, if not well-nigh impossible, to prove.[91]

In the same vein, this apparent corroboration between the aforementioned statements of the prosecution witnesses make such statements more credible vis-a-vis the mere denial proffered by accused-appellant Baluan. Parenthetically, it is a standing practice in this jurisdiction to accord great respect and even finality to the trial court's findings of fact, including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn therefrom, as long as no facts or circumstances of weight have been overlooked, misapprehended or misinterpreted in such a way as to materially affect the disposition of the case. The reason behind this rule is stated in the case of *People of the Philippines vs. Welvin Diu y Kotsesa and Dennis Dayaon y Tupiy*,[92] thus:

“xxx [T]he issue raised by accused-appellant involves the credibility of witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in

evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case. xxx” (emphasis ours)

Furthermore, the assessment of the lower court in giving probative weight to the statement of Jonathan Cabico, the lone eyewitness, as to the identity of his sister's assailant finds more support in the case of *People vs. Fernando Pabillano, et al.*,^[93] where it was held that the natural inclination of a witness who is a relative of the victim is to implicate the true culprit. It elaborates, to wit:

“xxx the Court similarly accorded credence and weight to the testimonies of the prosecution witnesses, especially the deceased victim's son, who gave an eyewitness account of the crime, ratiocinating as follows:

No reason or motive was adduced by appellants why any of the prosecution witnesses should falsely accuse them. Where there is no evidence to show that the principal witnesses for the State were actuated by ill-motive, their testimonies are entitled to full faith and credit. The natural interest of a witness who is a relative of the victim, (such as Jose Roño, III, the son of Jose Jr.) in securing the conviction of the guilty would deter him from implicating a person other than the true culprit. xxx”

The only defense offered by accused-appellant Baluan is the alibi that he was just in his room in the factory because he was sick when the incident happened. Jurisprudence states that for the defense of alibi to prosper, the accused must prove the following:

1. His presence at another place at the time of the commission of the crime; and
2. The physical impossibility of his presence at the scene of the crime.^[94]

A review of the records however shows that accused-appellant Baluan failed to satisfy these requirements. Notably, the factory where he is staying is located near the crime scene as it is just 100 meters away from the Mitura river where the crime was committed.^[95] Moreover, other than his bare allegation that he was sick on the day the crime was perpetrated, no other evidence was adduced to support his claim. Verily, these established facts contradict the idea that he was at another place at the time the crime was committed, more so the same failed to demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.

It is doctrinal that denial and alibi are among the weakest, if not the weakest, defenses in criminal prosecution.^[96] As such, if these defenses are unsubstantiated by clear and convincing evidence, they are viewed as self-serving assertions that deserve no weight in law.^[97] The case of *Bobby “Abel” Avelino y Bulawan vs. People of the Philippines*,^[98] explains, thus:

“xxx For alibi to prosper, it is not enough to prove that appellant was somewhere else when the crime was committed; he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. Denial, like alibi, as an exonerating justification[,] is inherently weak and if uncorroborated regresses to blatant impotence. Like alibi, it also constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.^[99] xxx” (emphasis ours)

Hence, accused-appellant Baluan's mere denial cannot outweigh the eyewitness' testimony and circumstantial evidence clearly establishing his culpability in the crime charged.^[100] This is consistent with the principle that

the positive declarations of a prosecution witness prevail over the bare denials of an accused.[101]

Finally, as regards the award of damages, the heirs of Juvelyn C. Cabico should have also been awarded civil indemnity in the amount of P50,000.00 and P30,000.00 as exemplary damages,[102] aside from the P50,000.00 moral damages and actual damages ordered paid by the lower court.

WHEREFORE, premises considered, the assailed Decision dated February 27, 2009 of the Regional Trial Court, Urdaneta, Pangasinan, Branch 49 is hereby AFFIRMED with MODIFICATION, in that accused-appellant Baluan is also ordered to pay the heirs of the victim Juvelyn C. Cabico P50,000.000 as civil indemnity and P30,000.00 as exemplary damages. In all other respects, the assailed decision stands.

SO ORDERED.

Garcia, R.R., and Bueser, D.Q., JJ., concur.

[1] Records, pp. 733-768

[2] Records, pp. 767-768

[3] Records, p. 70

[4] Note: The initial Information dated July 1, 2000 (Records, p. 1-2) was amended to alleged the part of minority of the victim.

[5] Records, pp. 266-270

[6] Records, pp. 358-359

[7] Records, pp. 359, 369, 402

[8] Records, p. 151

[9] Records, pp. 149-150

[10] Records, pp. 93-100

[11] Records, p. 163

[12] Transcript of Stenographic Notes (TSN) of the witness Cipriano Cabico taken on April 23, 2001, pp. 3-13 and April 30, 2001, pp. 2-5

[13] Records, p. 23

[14] Records, p. 8

[15] TSN of the witness Cipriano Cabico taken on April 23, 2001, p.4

[16] TSN of the witness Cipriano Cabico taken on April 23, 2001, p.3

[17] Records, p. 294

[18] TSN of the witness Cipriano Cabico taken on April 23, 2001, pp. 12-13

[19] Records, p. 10

[20] Records, pp. 296, 299

- [21] Records, pp. 297-298
- [22] TSN of the witness Cipriano Cabico taken on April 30, 2001, p. 3-4 and May 21, 2001, p. 2
- [23] TSN of the witness Cipriano Cabico taken on May 21, 2001, pp. 4-11
- [24] TSN of the witness Cipriano Cabico taken on May 21, 2001, pp. 11-13
- [25] TSN of the witness Cipriano Cabico taken on May 21, 2001, pp. 13-15
- [26] TSN of the witness NBI Special Investigator Diogenes Norlo T. Galang taken on June 4, 2001, pp. 3-26
- [27] Records, p. 9
- [28] Records, pp. 34-35
- [29] Records, p. 11
- [30] Records, p. 10
- [31] Records, p. 12
- [32] Records, p. 14
- [33] Records, p. 16
- [34] Records, pp. 17-19
- [35] Records, p. 8
- [36] Records, pp. 5-7
- [37] TSN of the witness NBI Special Investigator Diogenes Norlo T. Galang taken on June 4, 2001, pp. 27-28
- [38] TSN of the witness Jonathan Cabico taken on July 9, 2001, pp. 12-13
- [39] Records, p. 11
- [40] TSN of the witness Jonathan Cabico taken on July 9, 2001, p. 4
- [41] TSN of the witness Jonathan Cabico taken on July 9, 2001, pp. 2-13
- [42] TSN of the witness Jonathan Cabico taken on July 9, 2001, pp. 13-16 and August 8, 2001, pp. 3-17
- [43] TSN of the witness Jonathan Cabico taken on October 2, 2001, pp. 2-10
- [44] TSN of the witness Jonathan Cabico taken on October 2, 2001, pp. 10-16
- [45] TSN of the witness Jerry Cabico taken on October 24, 2001, pp. 11-12
- [46] Records, p. 12
- [47] TSN of the witness Jerry Cabico taken on October 24, 2001, pp. 2-12
- [48] TSN of the witness Jerry Cabico taken on October 24, 2001, pp. 12-18
- [49] TSN of the witness SPO3 Nicomedes Antonio, Jr. taken on December 5, 2001, pp. 2-5
- [50] Records, p. 20
- [51] TSN of the witness SPO3 Nicomedes Antonio, Jr. taken on December 5, 2001, p. 6

- [52] TSN of the witness Dr. Ramon Gonzales taken on December 13, 2001, pp. 3-9
- [53] Records, p. 23
- [54] TSN of the witness Dr. Ramon Gonzales taken on December 13, 2001, pp. 9-10
- [55] TSN of the witness Dr. Ronald R. Bandonill taken on January 15, 2002, pp. 3-15
- [56] Records, p. 8
- [57] TSN of the witness Dr. Ronald R. Bandonill taken on January 15, 2002, pp. 15-16
- [58] TSN of the witness accused appellant Erlindo Baluan taken on August 5, 2004, pp. 3-15 and October 7, 2004, pp. 3-9
- [59] TSN of the witness accused appellant Erlindo Baluan taken on October 7, 2004, pp. 5-9
- [60] TSN of the witness accused appellant Erlindo Baluan taken on November 11, 2004, pp. 2-4
- [61] Records, pp. 38-39
- [62] TSN of the witness accused appellant Erlindo Baluan taken on November 11, 2004, pp. 4-5
- [63] TSN of the witness accused appellant Erlindo Baluan taken on November 11, 2004, p. 6
- [64] TSN of the witness Barangay Kagawad Manuel Lebaste taken on August 30, 2005, pp. 3-5
- [65] Records, pp. 623-624
- [66] TSN of the witness Barangay Kagawad Manuel Lebaste taken on November 25, 2004, pp. 3-16
- [67] TSN of the witness Barangay Kagawad Manuel Lebaste taken on September 21, 2005, pp. 3-12
- [68] TSN of the witness SPO4 Mario Tajon taken on January 26, 2006, pp. 3-7
- [69] TSN of the witness Dr. Rodelia M. Ramos taken on November 16, 2006, p. 6
- [70] TSN of the witness Dr. Rodelia M. Ramos taken on November 16, 2006, pp. 6-16
- [71] TSN of the witness Dr. Rodelia M. Ramos taken on November 16, 2006, pp. 16-22
- [72] Supra, footnote 1
- [73] Records, pp. 769-787
- [74] Records, p. 794
- [75] Rollo, pp. 275-276
- [76] TSN of the witness Jonathan Cabico taken on July 9, 2001, p. 7
- [77] TSN of the witness Jonathan Cabico taken on July 9, 2001, p. 4
- [78] TSN of the witness Jonathan Cabico taken on July 9, 2001, p. 8
- [79] TSN of the witness Jerry Cabico taken on October 24, 2001, p. 11
- [80] TSNs of the witnesses Dr. Ramon Gonzales taken on December 13, 2001, p. 5 and Dr. Ronald R. Bandonill taken on January 15, 2002, pp. 7-8

[81] TSN of the witness Jonathan Cabico taken on July 9, 2001, p. 9

Note: Even if accused-appellant Baluan was not the one who actually placed the belt on the neck of the victim, his act of not stopping his companions from doing so suggests his agreement to their deeds. The case of *People of the Philippines vs. P/Supt. Artemio E. Lamsen, et al.* (G. R. No. 198338, February 20, 2013) is instructive:

“xxx It is settled that direct proof is not essential to establish conspiracy as it may be inferred from the collective acts of the accused before, during and after the commission of the crime. It can be presumed from and proven by acts of the accused themselves when the said acts point to a joint purpose, design, concerted action, and community of interests. xxx”

[82] TSN of the witness Jerry Cabico taken on October 24, 2001, p. 8

[83] TSN of the witness Dr. Ramon Gonzales taken on December 13, 2001, p. 6

[84] TSN of the witness Jerry Cabico taken on October 24, 2001, p. 8

[85] TSNs of the witnesses Dr. Ramon Gonzales taken on December 13, 2001, p. 7 and Dr. Ronald R. Bandonill taken on January 15, 2002, p. 12

[86] *Benjamin Jesalva vs. People of the Philippines*, (G. R. No. 187725, January 19, 2011)

[87] *Benjamin Jesalva vs. People of the Philippines*, (G. R. No. 187725, January 19, 2011)

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] G.R. No. 201449, April 3, 2013

[93] G.R. No. 108618, February 6, 2001

[94] *Edmundo J. Escamilla vs. People of the Philippines* (G.R. No. 188551, February 27, 2013)

[95] TSN of the witness accused appellant Erlindo Baluan taken on November 4, 2004, pp. 5-6

[96] *People of the Philippines vs. Edmundo Vitero* (G. R. No. 175327, April 3, 2013)

[97] *Id.*

[98] G.R. No. 181444. July 17, 2013

[99] *Bobby “Abel” Avelino y Bulawan vs. People of the Philippines* (G.R. No. 181444. July 17, 2013)

[100] *Benjamin Jesalva vs. People of the Philippines*, (G. R. No. 187725, January 19, 2011)

[101] *Id.*

[102] See, *People of the Philippines vs. David Maningding*, G.R. No. 195665, September 14, 2011, citing *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797, also cited in *People of the Philippines v. Allan Gabrino*, G.R. No. 189981, March 9, 2011; and *People v. Sanchez*, G.R. No. 131116, August 27, 1999, 313 SCRA 254

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