

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMBROCIO BAUTISTA Y SANCHEZ, DEFENDANT-APPELLANT.

G.R. No. L-48606. July 11, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an automatic review of the decision of the then Court of First Instance of Cavite finding accused Ambrocio Bautista guilty of the crime of rape with homicide and sentencing him to DEATH; to indemnify his, father-in-law, widower of the victim, the amount of P12,000.00; a second amount of P10,000.00 for exemplary damages; and a third amount of P5,000.00 as moral damages and to pay the costs.

The information charged the accused with the crime of rape with homicide as follows:

"That on or about December 29, 1974, in the Municipality of General Trias, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and violence, did, then and there, wilfully, unlawfully, and feloniously, have carnal knowledge of TELESFORA CULAPAN CUSTODIO, against her will and consent: that on the occasion of the said, rape, the afore-named accused, with intent to kill, did then and there, wilfully, unlawfully and feloniously, attack, assault and strangle said Telesfora Culapan Custodio to prevent her from breathing and making an outcry, and then threw her into a stream, and as a direct result of all of which said Telesfora Culapan Custodio died."

The evidence for the prosecution is summarized in the People's, brief as follows:

"On December 29, 1974, at about 8:30 in the evening at a sari-sari store in Bo. Pasong Camachile Gen Trias, Cavite, Benigno Saflor, son of the victim Telesfora Culapan Custodio (also known as Telesfora Custodio Saflor), and the accused Ambrocio Bautista, son-in-law of the victim, together with three other persons were having a drinking spree. A little later, the victim, who was also at the said store, left for her house, which was about 15 minutes walk distant, accompanied by the accused who insisted in doing so over the objection of Benigno Saflor who, earlier, had opted to see the victim home (tsn., pp. 2-7, February 17, 1977).

"At about 9:00 o'clock that evening, Francisca Bautista, wife of accused, Ambrocio Bautista, heard her mother Telesfora Culapan Custodio Shout 'Napakawalang hiya mo Ambrocio bakit mo ako ginaganito' (tsn. pp. 2-10, May 27, 1975). Alarmed by what she heard, Francisca immediately left their house situated in Bo. Pasong Camachile, Gen Trias, Cavite, and rushed towards the direction from where her mother's voice emanated. After traversing a distance of about 30 meters from their house, Francisca stopped and at a distance of 10 meters from where she stood, she saw her mother lying on the ground in a supine position and atop her mother, was her husband, Ambrocio, his hands in a stranglehold around the neck of her mother who was trying to extricate herself therefrom. Ambrocio was simultaneously driving his buttocks up and down over Telesfora's genitalia, Francisca noticed that her mother wore no panties, her dress torn, on its front portion, from top to bottom, and the accused, Ambrocio, naked from waist up, his pants pulled down, his buttocks exposed to view. This outrageous, dreadful and despicable sight, illuminated by bright moonlight dumbfounded and frightened Francisca who, unable to do anything, left the scene crying and went home (tsn. pp. 10-15, 29-33, 41, Ibid.)

“Later that evening, when accused Ambrocio arrived home and was asked by Francisca why he raped her mother, he retorted, 'Pinatay ko ang nanay mo, at kapag ikaw ay nagsumbong ay papatayin kita at lahat kayong mag-anak' (tsn. pp. 15-16, 23-24, Ibid.)

"In the morning of the following day, a search party which was organized by Pedro Saflor and Benigno Saflor, husband and son of the victim Telesfora, respectively, to look for the victim who did not come home the previous night, found the remains of the victim in a stream in Barrio pasong Camachile, General Trias, Cavite near the place where Francisca last saw the victim together with the accused (tsn. pp. 55-56, May 27, 1975; 8-9, February 17, 1977).

“Later that same morning, when Lt. Magsambol, Sgt. Numbrado and Pat. Florentino of the Police Force at General Trias arrived to investigate the cause of Telesfora's death, Francisca told the policemen that it was her husband, Ambrocio Bautista, who, had raped and killed Telesfora (tsn. pp. 18-19, May 27, 1975).

"On December 30, 1974, Dr. Abundio Porto, Rural Health Officer of Gen. Trias, Cavite examined the remains of the victim Telesfora Custodio and issued the following findings:

"Post-Mortem Examination

"I. General Data:

Name: Telesfora Custodio

Age: 41

Sex: Female

Civil Status: Married

Residence: Pasong Camachile, General Trias, Cavite

Occupation: Vendor

Place of Death Sitio Northeast of Pasong Camachile, General Trias, Cavite in a creek near the boundary of Navarro and Pasong Camachile

Time of Death: Night of Dec. 29, 1974

Date of Examination: Dec. 30, 1974 at her residence in Pasong Camachile, Gen. Trias, Cavite -8:30 a.m.

Approximate weight: 50 kilos.

Height: 4 ft. 8 in.

II. Findings:

"The deceased is in the state of rigor mortis, neck was swollen with fingernail marks at the middle of the neck-front. Bruises (2) abdomen - distended due to under-water overnight.

"Sexual organ highly inflamed with plenty of blood in the vaginal canal.

"Bruises on both knees.

"Clothes was torn at the middle portion - front, from neck down to the edge of her dress. No panties or any other underwear.

III. Immediate Cause of Death:

“1. Bleeding and shock

“2. Respiratory and circulatory arrest secondary to strangulation - neck.

“3. Pulmonary Congestion' (Exh. "E", p. 6, rec.).

"Dr. Porto opined that the injury sustained by the genitalia of Telesfora could have been caused by the insertion of a hard object like the male sex organ (tsn. pp. 2,5, 7-11, 43-44, May 7, 1976).

"On the same day, Dr. Porto also examined the body of accused Bautista. The result of the examination was reduced into writing as follows:

"December 30, 1974

"To Whom It May Concern:

"This is to certify that I have examined one, Mr. Ambrocio Bautista, of legal age and a resident of Pasong Camachile, Gen Trias, Cavite on December 30, 1974 for:

"Contusion with mark hematoma chest mid-portion about the size the mouth (2 inches).

"Multiple linear bruises chest arm and forearm, left hand with fingernail mark. Healing period: 5-7 days. (Exh. "F", p. 8, rec.)

"Dr. Porto stated that the contusion with marked hematoma on the chest of accused could have been caused by a fist blow. Dr. Porto also stated that the bruises found on the chest, arm and forearm of accused Ambrocio were caused by fingernail scratches (tsn. pp. 31-39, May 7, 1976).

"In the afternoon of December 30, 1974, Mayor Teofilo Grepo of Gen Trias, Cavite administered the oath to accused who affixed his thumbmark on Exhibit "B" (p. 5, rec.), wherein he admitted that he raped and killed Telesfora (tsn, pp. 4-9, Nov. 26, 1975)."

On the other hand, the accused who was represented by a counsel de oficio denied the charges. He testified that on December 29, 1974 at about 10:00 in the evening he, together with his brother-in-law Benigno Saflor, Rodolfo Lumagui, Boy Uson and Marcelo Sipat had a drink-ing spree at the house of Boy Uson; that the drinking spree lasted for 1 hour and he consumed about 24 bottles of beer; that his brother-in-law carried him home because he was drunk and could not walk anymore; and that the last time he saw his mother-in-law was in the morning of December 29, 1974.

The accused claimed that his extra-judicial confession is inadmissible as evidence against him as it was obtained through force and intimidation. Furthermore, the accused, through his counsel de oficio, opposed the presentation of his wife as a prosecution witness citing Section 20, Rule 130 of the Rules of Court which provides that any spouse is disqualified to testify against the other spouse, without the latter's consent. The objection was overruled by the trial court considering the circumstances of the case in relation to an earlier decision of this Court in *Ordonio v. Daquigan* (62 SCRA 270).

The accused-appellant raises the following assign-ments of errors in his brief:

I

THE TRIAL COURT ERRED IN FINDING THAT THE GUILT OF THE ACCUSED HAS BEEN PROVED BEYOND, PERADVENTURE OF DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE FANTASTIC AND UNBELIEVABLE TESTIMONY OF THE CHIEF PROSECUTION WITNESS.

III

THE TRIAL COURT ERRED IN REJECTING THE ACCUSED'S CLAIM OF INNOCENCE.

The issue raised in all three assigned errors pertains to the credibility of prosecution witness Francisca Bautista. The accused assails the testimony of his wife Francisca for being inconsistent, incredible and contrary to the ordinary cause of human knowledge and behavior.

On this issue, this Court has repeatedly ruled:

"Where the issue is one of credibility of a witness, it is a settled rule that Appellate Courts will generally not disturb the findings of the trial court, considering that it has unequalled competence to consider and determine the credibility of the witness, in view of its unique opportunity to observe the demeanor of the witnesses on stand, an opportunity not afforded to Appellate Courts; unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case (People v. Lucas Ramos y. Macasiray, No. 50450, March 16, 1984; People v. Elizaga, 73 SCRA 529 [Oct. 26, 1976]; People v. Espejo, 36 SCRA 400 [Dec. 19, 1970]; People v. Dorado, 30 SCRA 53 [Oct. 31, 1969]; People v. Ablaza, 30 SCRA 173 (Oct. 31, 1969); People v. Jaravata, 20 SCRA 1014 [Aug. 15, 1967]; People v. Sarmiento, 8 SCRA 263 (May 31, 1963); People v. Cristobal, 1 SCRA 151 (Jan. 28, 1961))." (People v. Seculles, 132 SCRA 653).

This Court does not find any fact of substance or value which would warrant a departure from the fore-going well-entrenched principle.

The trial court evaluated the credibility of Francisca Bautista as follows:

"The state found a stronghold against the accused now predicated on the straight and prevailing testimony given before this court by the little brown, short, simple, humble and lowly woman who was demonstratively distinct, honest, and attributed with a very high degree of credibility, although it was not perfectly descriptive of the abominable and ugly event unfortunately imposed upon her humble life. Nevertheless, it was faithful, honest and true. And so, Francisca Saflor Bautista set forth under oath before this court that she is the lawfully, married wife of the accused Ambrocio Bautista, that she was twenty five years old when she was testifying for the State on May 25, 1975 and other subsequent dates x x x."

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On the other hand, the trial court made the following observations while the accused was on the witness stand:

"When he was testifying, this accused pretended as if he was not being conched with the clandestine signals coning from and which were being made by his own mother (MATEA SANCHEZ) whom this court deliberately observed quietly to be going from one court PEW to another, from the left and then to right from the back and then to the front. Everytime, she was discharging her affront against the eyes of justice, she pretended to be wiping her face with her hands to cover up her schemes when she looked every now and then at the accused who waited for her secret signals under the pretext of portraying himself as if he was not looking at his mother. The court deliberately decided not to call her attention to stop acting in such a way to observe how the defense was portraying himself. But it was clearly and well illustrated by such behaviors that the accused was trained by his own mother to demonstrate his present kind of defense. At the witness stand the accused botched and punctuated his doubtful defense with magniloquence bristled with braggadocio, and puffed himself up with highfalutings actuations and stretched hyperbole as his mother was around bravely pretending that she was not coaching him with some signals (like wiping her face every now, and then with her hands) as mentioned above. With his wrong attitude at the witness stand, the accused Ambrocio Bautista portrayed himself to be innocent. x x x"

The appellant emphasizes inconsistent statements made by Francisca Bautista. In the early part of her testimony, she claimed that she was present and saw when the panty of the deceased Telesfora was removed by the accused. She contradicted this the latter part of her testimony when she stated that when she reached the place where the crime happened her mother was no longer wearing her panty. According to the appellant, this renders Francisca's entire testimony unworthy of belief.

The inconsistency is on a minor detail which does not affect the credibility of Francisca. It only refers to a collateral matter which does not touch the commission of the crime itself. The witness is a simple barrio woman

who was testifying on a terrifying experience involving her closest relatives. The decisive factor is that Francisca was a witness to the crime being committed by her husband against her own mother.

The appellant next questions the behavior of Francisca who upon seeing her mother being abused by her own husband acted in a manner unnatural and contrary to human experience. He questions - (1) Francisca's statement that while her mother was being raped and attacked by her husband, she just stood there for an entire 15 minutes without lifting a finger although she was only about 10 meters away from her mother; (2) Francisca's unbelievable reason that she failed to report to her father about what she witnessed because her child was then crying. The appellant argues that if it was true that she saw her husband raping her mother she would have gone post haste to her father's house which is only 15 meters away from her house to report what she saw; and (3) Her claim that the accused threatened her by uttering the words "Papaano ang mangyayari sa pangyayaring ito" in a loud voice overheard by some people.

The appellant's arguments have no merit. When asked why Francisca did not try to help when she saw her husband strangling her mother, she explained:

"Q.

What did you do upon seeing you mother being strangled by your husband Ambrocio Bautista?

"A.

I was frightened, I was very much frightened.

"Q.

Did you talk to your mother or to Ambrocio Bautista at the time when you said you were frightened?

"A.

No, sir.

"Q.

Then what did you do?

"A.

I went home crying (tsn. May 27, 1975 p. 11)

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"Q.

How long did you stay before leaving the place where you were because you become frightened?

"A.

For 15 minutes, sir.

"Q.

In the span of 15 minutes, you stood still at a distance of 10 meters, where you saw your mother and accused were?

"A.

When I arrived there I was stand-ing and when I saw the incident I trembled, my legs trembled.

"Q.

You did not say anything?

"A.

Because I was dumbfounded." (tsn, May 27, 1975, p. 44)

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"Q.

Mrs. Bautista, you stated seriously when you reached that place, you saw your husband strangling and subsequently moving his buttocks then up and down is that correct?

"A.

Yes, sir.

COURT:

"Q.

You did not even help your mother when you saw your mother being abused by your husband, you did not even try to help?

"A.

I was so frightened, your Honor, that is why it did not occur to my mind to answer the succor of my mother.

"Q.

When you saw your mother being entangled by the accused at that time your mother was not being raped by the accused yet, did it not occur to you to help her so that the accused would stop in his attempt to succeed raping your mother?

"A.

I was so frightened then."

(tsn, August 14, 1975, p. 18).

The manner by which Francisca repeatedly explained her reasons for not trying to help her mother shows that she is not a perjured witness. There is no standard form of behavior when one is confronted by a shocking incident.

(People v. Amancio, 127 SCRA 686). Only a sickly evil mind would rape and strangle to death his own mother-in-law. The wife must have been dumbfounded at the incident and paralyzed into relative inaction. Previous experiences of how her husband behaved under certain circumstances could also be influencing factors. She was not contending with strangers. At any rate, her reaction is not incredible under the circumstances wherein she suddenly found herself at the time. The grotesque sight of her mother being attacked by her own husband, frightened and shocked her to the point that she could no longer think and act rationally. The trial court correctly observed:

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"Indeed, there are many people like her who could not do anything but keep themselves insecure at the sight of a rather unspeakable and repulsive occurrence. Quite obviously, she could not unshackle herself from the sight of an ominous offense which was being perpetrated against her and her own mother by her own husband."

Francisca's not leaving her house to report the shocking incident she just witnessed because her child was crying is not as incredible as the accused suggests. It has to be stressed that the child who was then crying was only 21 days old. Owing to the tender age of her child, she could not have left, much less carry her baby late at night as the accused suggests to go to her father's house to report what she had just witnessed. She was then in a state of shock and must have rationalized her unusual behavior at the time by using the handiest available reason.

The accused contends that Francisca's claim that the accused threatened her by saying "Papaano ang mangyayari sa pangyayaring ito?", in a loud voice amidst a group of people is incredible. We agree with the Solicitor General that:

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"x x x Her declaration to the effect that the appellant, in the presence of several people, threatened her in a loud voice by saying Papaano ang mangyayari sa pangyayaring ito?' is credible. Appellant uttered these words in the presence of other people who had no reason to attach any significant meaning to them and to Francisca, who, until that very moment, was still gripped with fear, could only interpret them as a reiteration of the appellant's earlier threat, 'pinatay ko ang nanay mo, at kapag ikaw ay nagsumbong ay papatayin kita at lahat kayong maganak."

Most important of all, the defense failed to pre-sent any motive on the part of Francisca to fabricate the charge against her own husband knowing fully well that it would certainly bring ignominy, humiliation and dishonor to their family.

From the records, we have no doubt that the appellant committed the crimes imputed against him. He was positively identified by his own wife Francisca who saw him raping and strangling her own mother. Telesfora Custodio, Francisca's mother was found dead in a creek the day after the latter witnessed the gory incident. The post-mortem examination performed by Dr. Abundio Porto, Rural Health Officer of Gen. Trias, Cavite revealed that Telesfora died shortly after the time Francisca saw the incident between the victim and the appellant. Furthermore, the post-mortem examination corroborates the testimony of Francisca to the effect that she saw her husband strangling her mother. Dr. Porto's finding that the "neck was swollen with fingernail marks at the middle of the neck front" confirms the truth of Francisca's statement. Her testimony that she notice at the time the accused was on top of her mother performing sexual acts upon her, that her mother's dress was torn on its front portion from top to bottom is corroborated by Dr. Porto's finding that the "clothes was torn at the middle portion-front from neck down to the edge of her dress."

The medical examination on the body of the appellant the day after the incident and shortly after he was investigated for the death of Telesfora clearly shows that he suffered "contusion with marked hematoma chest

mid-portion about the size of the mouth (2 inches)" and multiple linear bruises chest, arm and forearm, left hand with fingernail mark." According to Dr. Porto, the contusion with marked hematoma on the chest of the accused could have been caused by a fist blow and that the bruises found on the chest, arm and forearm of accused Ambrocio were caused by fingernail scratches (tsn, May 7, 1976, pp. 31-39). These findings corroborate the testimony of Francisca that she saw her mother trying to extricate herself from the accused by fighting him, but at that time the accused was already strangling (sinasakal) her.

The injuries suffered by the appellant were the result of Telesfora Custodio's struggle and not the result of the alleged torture which he claims to have suffered at the hands of a police investigator. Police do not intimidate detainees by scratching them with their fingernails. The medical examination was in the afternoon of December 30, 1974 while the torture allegedly took place in the evening of December 30, 1974 following the testimony of the accused himself (tsn, June 16, 1977, p. 26).

The fact that the appellant joined the search for the victim and that he and a certain Gabriel Madlangbayan went to Noveleta, Cavite to buy a coffin for the victim does not disprove his culpability of the offense charged nor strengthen his claim of innocence. We agree with the Solicitor General, to wit:

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"x x x The solicitous attitude of appellant was part of his craft to divert attention from him and appear blameless. Appellant assumed this posture of innocence despite his awareness that his wife Francisca knew his culpability of the crime charged because he was doubly certain that Francisca, who feared for her life as well as the lives of her relatives, would not expose him."

The appellant also questions the admissibility of his extra-judicial confession which he executed in the presence of Mayor Grepo of General Trias, Cavite. He contends that he was tortured and maltreated by a police investigator forcing him to execute the said extra-judicial confession. Further, he contends that Mayor Grepo falsely testified as regards the circumstances surrounding the affixing of his thumbmark on the extra-judicial confession because the mayor was his political enemy.

There is no need to pass upon this issue in view of the more than adequate evidence aside from the extra-judicial confession to prove the guilt of the accused beyond reasonable doubt.

The trial Court correctly imposed the death penalty. This Court ruled in *People v. Martinez*, (128 SCRA 102) citing the earlier cases of *People v. Pascual, Jr.*, (109 SCRA 197) *People v. Saligan*, (101 SCRA 264); *People v. Laspardas*, (93 SCRA 638); *People v. Yutila*, (102 SCRA 264); *People v. Vizcarra*, (115 SCRA 743); and *People v. Umali*, (116 SCRA 23):

"For the rape with homicide, a capital offense par excellence, the penalty under Art 335, in relation to Articles 160 and 63 of the Revised Penal Code, is death which is imposable regardless of the generic mitigating and aggravating circumstances attending that special complex offense. "

However, taking into account the appellant's unlettered and simpleminded condition, his want of intellect, and his participating in a drinking spree immediately before the killing coupled with the pitiless finality and irrevocable nature of the death penalty, the court failed to muster the necessary votes for a death sentence and was constrained to lower the penalty to reclusion perpetua.

WHEREFORE, for want of necessary votes, the Court imposes on the accused-appellant the penalty of reclusion perpetua. The judgment of the lower court is further MODIFIED in that the appellant is ordered to pay the heirs of Telesfora Custodio the sum of TWENTY THOUSAND PESOS (P20,000.00) as moral damages and THIRTY THOUSAND PESOS (P30,000.00) as indemnity. The award of exemplary damages is deleted. Costs de officio.

SO ORDERED.

Teehankee, C.J., Abad Santos, Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Cruz, and Paras, JJ., concur.

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