

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. ABELARDO MARQUEZ Y. MARTINEZ, DEFENDANT.

G.R. No. L-48834. September 14, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

Before the Court, on automatic review, is the decision* of the Court of First Instance of Quezon, Ninth (9th) Judicial District, Branch X-Gumaca, convicting the accused Abelardo Marquez of the crime of rape with homicide and sentencing him to suffer the supreme penalty of death, to indemnify the heirs of the victim, Eva Alva, in the amount of Twelve Thousand Pesos (P12,000.00) and to pay the costs[1].

The prosecution's version of the case, as summarized by the court a quo, is as follows:

FOR THE PROSECUTION

"That at about 1:00 P.M. of September 16, 1975, while the victim Eva Alva, a six year old girl, was with her brother, Gerardo, playing with other children on the seashore of Bo. Balubad, Atimonan, Quezon, the accused, Abelardo Marquez, approached Eva and took her with him towards the "Cotralco" compound, purportedly for Eva to watch or guard his banca near there; that about 5:00 P.M., the father of Eva, Geminiano Alva, came home from work and finding Eva not at home, started to look for her; that at about 6:00 P.M., Geminiano came upon the accused and asked him of the whereabouts of Eva; that after accompanying Geminiano to his house, the accused did not help anymore in looking for Eva and instead, ran away; that at about 7:00 P.M. of September 16, 1975, the body of Eva Alva was found floating in an abandoned toilet inside the "Cotralco" compound; that the Necropsy Report on the victim made at 11:36 P.M., September 16, 1975 shows the following findings: "POST-MORTEM FINDINGS 1. Slight abrasion both zygomatic arch; 2. Wound lacerated 3/4 inch in length located at the fourchet down to the perinium; 3. Vaginal opening, admits the thumb of the head wound is fresh and bleeds upon manipulation."; that the cause of death was "asphyxia" or suffocation; that she was raped before she died; that the probable time of death was more or less 7 to 9 hours before the autopsy was made; that on September 22, 1975, the accused surrendered to the barrio captain of Balubad, who brought him to the police authorities of Atimonan; that during the police investigation, the accused admitted raping and killing Eva Alva; that the voluntary admission of guilt by the accused was reduced to writing and duly sworn to before the then Municipal Judge of Atimonan, Honorable Manuel A. Roman"[2].

On the other hand, the accused's version of the case, also as summarized by the court a quo, is as follows:

FOR THE ACCUSED

"For the defense, the accused himself, Abelardo Marquez, Mariano Villareal and Efren Albea testified. From their testimonies, the version of the defense follows:

"That around 12:00 noon of September 16, 1975, the accused, together with Efren Albea, left Barrio Balubad, Atimonan for Gumaca to buy paint; that after buying paint and having merienda at Gumaca, they returned to

Bo. Balubad arriving there at about 2:30 P.M. of the same date; that without Efren Albea leaving his side, the accused then played "mahjong" until 6:00 P.M. when Geminiano Alva came and asked for Eva Alva; that Geminiano Alva requested the accused in looking for the child and they looked for her in her house and at the seashore; that failing to find the child, the accused went home; that later, Geminiano went to the house of the accused and in an angry voice, called for the accused to come down and talk with him; that fearing Geminiano who had a bolo with him, the accused went out of his house and hid in the mountain until September 22, 1975 when he sur-rendered to the Barrio Captain of Balubad, Mariano Villareal; that the barrio captain sum-moned a policeman and thereafter, the accused was brought to the municipal jail; that during the night, Patrolman Angel Francia investigated the accused for three times; that on the third time, Patrolman Angel Francia prepared an affi-davit and told the accused to sign the same; that the accused fearing the way the policeman looked at him and without reading the contents of the affidavit affixed his signature thereto; that thereafter, the accused was placed back in jail and was not bothered in his sleep anymore during that night; that before the accused signed his affidavit, he was not told of his rights as an accused; that on April 21, 1976, the accused executed an affidavit before Fiscal Refazo stating therein that the reason why he signed his previous affidavit was for fear of being manhandled and that he was forced to admit the crime because he was told that should he refuse, he will be hanged; that when the accused subscribed to the truth of his earlier affida-vit, Judge Roman did not read the contents thereof to him and was just told to raise his right hand; that the accused did not rape nor kill the victim as he was then in Gumaca at the time of the incident in question"[3].

From the evidence adduced, both testimonial and documentary, the court a quo arrived at its version of the case, to wit:

"Premised on all the foregoing considerations, it is the finding of this Court that in the early afternoon of September 16, 1975, the accused Abelardo Marquez, asked Eva Alba who was then playing with other children, to go with him and guard his banca near the "Cotralco" at Bo. Balubad, Atimonan, Quezon; that Eva Alba knowing the accused, went with him; that reaching the compound of the "Cotralco", the accused decided to have carnal knowledge of her; that Eva Alba obviously pained by the rape being perpetrated on her, cried and shouted; that the accused, to pre-vent people from hearing her, covered her mouth and continued to rape her; that continuing to rape her, the accused found that she was no longer breathing as she suffocated; that the accused then carried her body and placed the same in an unfinished toilet pit near where the rape was committed; that thereafter, the accused left the place and proceeded to Gumaca where he bought paint for his banca; that returning to Bo. Balubad, he played "mahjong" at Mang Eton and pretended nothing happened; that early that night of the same day, Geminiano Alba asked him of the whereabouts of Eva and requested him to look for her; that the accused went with him and pretended to look for her; that feeling he was strongly sus-pected after the body was discovered, the accused hid in the mountain, but unable to contain his guilt, surrendered to the Barrio Captain six days later; and that during the police investigation, fully aware of all his rights as an accused voluntarily executed and subscribed to his affidavit dated September 22, 1975"[4].

After trial, as afore-stated, the trial court found the accused guilty beyond reasonable doubt of the crime of rape with homicide, as defined and punished under Article 335 of the Revised Penal Code. He was sentenced accordingly.

Accused raises the following assignment of errors:

1. that the court erred in finding the accused guilty beyond reasonable doubt of the crime charged; and
2. the court erred when it finds the extraju-dicial confession of the accused as admis-sible in evidence[5].

In support of the first assignment of error, accused contends that he could not be held guilty of the crime charged, as there was no single eyewitness to the commission of the crime[6].

After a thorough examination of the records of the case, the Court finds no reversible error committed by the trial

court in finding the accused guilty of the crime charged. While there may be no eyewitness (except the accused himself) to the actual commission of this heinous crime perpetrated on a six (6) year old girl, there is however more than ample evidence clearly and unmistakably linking the accused as the author of the crime.

Accused was the last person seen with the victim, Eva Alva. He was positively identified by the prosecution witnesses Gerardo Alva and Sotero Ricafort. Gerardo Alva testified that at around one o'clock in the afternoon of 16 September 1975, while he was playing with other children, including his sister Eva Alva, on the seashore of Bo. Balubad, Atimonan, accused approached his sister and told her to go with him to watch or guard his banca near the "Cotralco" compound. The testimony[7] of the nine year old witness, Gerardo Alva, reads:

Q. Do you know Abelardo Marquez?

A. Yes, sir.

Q. Point him in Court.

A. Yes, sir (Witness pointing to a person in the accused stand who, when asked of his name responded to be Abelardo Marquez).

Q. Before your sister died on September 16, 1975, at about one o'clock of September 16, 1975, you and your sister Eva, together with other children of barrio Balubad are playing in the seashore, is it not?

A. Yes, sir. We were playing.

Q. And while you were playing there, you saw the accused Abelardo Marquez approached your sister Eva?

A. Yes, sir.

Q. And what did Abelardo do when he approached your sister?

A. He accompanied her. "Isinama po."

Q. Where did they go?

A. Near the Cotralco, sir.

Q. After they have gone to the Cotralco, did you join your sister?

A. Yes, sir, but he told me to return. I joined but I was ordered to return.

Q. Who ordered you to return?

A. Abelardo, sir.

Q. And from that time on, you did not see your sister Eva alive anymore?

A. No, sir.

Another prosecution witness, Sotero Ricafort, also identified the accused as the person whom he saw talking to the victim Eva Alva in the afternoon of 16 September 1975, and after which, he saw the accused and the victim going towards the direction of the "Cotralco". At about six o'clock in the evening of the same day, 16 September 1975, he learned that Eva Alva was dead.[8]

Both prosecution witnesses testified that they saw the accused with the victim Eva Alva going to the direction of the "Cotralco" compound. The body of Eva Alva was found floating in an abandoned toilet pit inside the "Cotralco" compound. It was also established that the victim probably died seven (7) to nine (9) hours before the autopsy was made, which was about the same time that the victim was seen with the accused before her

disappearance.

Accused interposed the defense of alibi. The trial court correctly rejected his defense. The court said: "xxx the place of the incident is not of such distance as to pre-clude the accused from being in Gumaca and yet be in that place of the incident at the probable time of death of the victim. Especially so in this case where the accused also admitted that he was back in Bo. Balubad, Atimonan from Gumaca at about 2:30 P.M. of the same day, which time is also within the probable time of death of the victim as per Exhibit "A" for the prosecution (Necropsy Report Medico-Legal) xxx".[9]

Well settled is the rule that for alibi to prosper, it must be established by positive, clear and satisfactory evidence. The accused must show not only that he was somewhere else when the crime was committed but that he must likewise demonstrate that it was physically impossible for him to have been at the place where the crime was committed at the time of its commission[10].

Moreover, flight is evidence of guilt. On direct examination, accused admitted hiding in the mountains for six (6) days after the death of Eva Alva, or until 22 September 1975, when he surrendered to the Barrio Captain of Balubad[11].

Accused questions the credibility of prosecution witnesses Sotero Ricafort and Ceferino Nieva claiming certain allegedly material contradictions and inconsistencies in their testimonies.

The alleged contradictions and inconsistencies pointed out by the accused in the affidavit and testimony in court of said witnesses refer to minor details which do not destroy the credibility of the witnesses. On the contrary, they indicate that the witnesses were telling the truth and not previously rehearsed[12].

On the admissibility of the extrajudicial confession of the accused, let it be noted that the preliminary questions of the police investigator informing the accused of his rights and his answers thereto, read as follows:

"1. Tanong : Ito ba ay iyong nalalaman?

Sagot : Opo, nalalaman ko po.

"2. T: Bago ka magbigay ng salaysay sa pag-sisiyasat na ito ay nalalaman mo ba na ikaw ay may karapatang manahimik at huwag sumagot sa ano mang tanong sa iyo at ang lahat ng iyong sasabi-hin sa pagsisiyasat na ito ay maaaring gamitin laban o panig sa iyo sa alin mang Hukuman?

S: Nalalaman ko po, ngunit handa po akong magbigay ng salaysay sa pagsisiyasat na ito.

"3. T: Nalalaman mo rin ba na ikaw ay may layang magkaroon ng manananggol sa pagsisiyasat na ito?

S: Nalalaman ko po, ngunit hindi ko na po kailangan sa ngayon ang manananggol at sa Hukuman na lamang kung kailangan pa.

"4. T: Kung ikaw ay bigyan ko ng manananggol sa ngayon?

S: Sa Hukuman na po[13]."

The foregoing questions by the police investigator and the answers given thereto by the accused, satisfy, in our mind, the requirement under the 1973 Constitution then enforced[14], that the accused be apprised of his constitutional right to remain silent and to counsel. Such questions substantially transmitted meaningful information to the accused regarding his aforesaid constitutional rights, as distinguished from a mere ceremonial and perfunctory recitation of an abstract constitutional principle[15]. There was compliance with People v. Duhan, where the Court said:

"xxx As a rule, therefore, it would not be sufficient for a police officer just to repeat to the person under investigation the provisions of Section 20, Article IV of the Constitution. He is not only duty-bound to tell the person the rights to which the latter is entitled; he must also explain their effects in practical terms, e.g., what the person under interrogation may or may not do, and in a language the subject fairly understands. (See *People vs. Ramos*, 122 SCRA 312; *People v. Caguioa*, 95 SCRA 2.) In other words, the right of a person under interrogation 'to be informed' implies a correlative obligation on the part of the police investigator to explain, and contemplates an effective communication that results in understanding what is conveyed. Short of this, there is a denial of the right, as it cannot truly be said that the person has been 'informed' of his rights. Now, since the right 'to be informed' implies comprehension, the degree of explanation required will necessarily vary, depending upon the education, intelligence and other relevant personal circumstances of the person under investigation. Suffice it to say that a simpler and more lucid explanation is needed where the subject is unlettered." [16]

We, therefore, agree with the trial court when it held in reference to accused's extra-judicial confession, thus:

"xxx. What is primarily important is whether or not said affidavit of confession was voluntarily executed by the accused and sworn to by and with the accused fully aware of all his rights. Aside from the presumption of regularity in the performance of the duties of public officers, the evidence for the prosecution, as well as the admission of the accused that he did appear before the said Judge and swore to the truth of the affidavit wherein it was clearly stated that beforehand, he had been informed of his rights as an accused, more than amply show that the law and jurisprudence on the taking of extrajudicial confession had been followed substantially." [17]

It is clear that the accused in this case waived his right to counsel before making his extra-judicial confession. However, this waiver, according to a number of decisions [18] of the Court, to be valid, must be made with the assistance of counsel, otherwise, the extrajudicial confession would be inadmissible in evidence [19].

Even if we do not, however, consider the accused's extrajudicial confession, the judgment of conviction stands as the evidence, testimonial and documentary (exclusive of the extra-judicial confession) abundantly establish accused's guilt beyond reasonable doubt.

The crime committed by the accused is rape with homicide punishable by death under Article 335 of the Revised Penal Code as amended by Rep. Act. No. 4111. Under the 1987 Constitution [20], however, the penalty of death is abolished [21]. The penalty imposed by the trial court should, therefore, be reduced to reclusion perpetua.

WHEREFORE, the decision under review is hereby affirmed with the modification that the accused is hereby sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim, Eva Alva, in the amount of P30,000.00 and to pay the costs.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Bidin, Sarmiento, and Cortes, JJ., concur.

* Penned by Judge Conrado R. Antona

[1] Decision, p. 7

[2] Rollo, pp. 5-6

[3] Rollo, pp. 6-7

- [4] Rollo, p. 9
- [5] Appellant's Brief, p. 1
- [6] Appellant's Brief, p. 4
- [7] TSN, 24 November 1976, pp. 4-5
- [8] TSN, 24 November 1976, pp. 14-15
- [9] Decision, p. 4
- [10] *People vs. Conrado*, 145 SCRA 250, 255
- [11] TSN, 8 November 1977, pp. 5-6
- [12] *People v. Abigan*, 144 SCRA 130, 136. *People vs. Nati-pravat* 145 SCRA 483, 493.
- [13] Original Folder of Exhibits, p. 5
- [14] Sec. 20, Art. IV, 1973 Constitution: "No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence".
- [15] *People v. Albofera and Laurian*, G.R. No. 69377 20 July 1987

[16] 142 SCRA 100, 107

- [17] Rollo, Decision, p. 9
- [18] *Morales, Jr. vs. Enrile*, G.R. No. 61016, 26 April 1983, 121 SCRA 538; *People vs. Albofera, et. al.*, G.R. No. 69377, 20 July 1987. Some members of the Court have their reservations on the ruling that waiver of the right to counsel must at all times be made with the assistance of counsel for the admissibility of an extra-judicial confession made without assistance of counsel. The writer of this opinion shares the same reservations in reference to the 1973 Constitution. As stated in his concurring opinion in *People vs. Marco Polo y Fullante*, G.R. No. 72899, 30 January 1987, the waiver of the right to counsel, made in the absence of counsel, may be valid in the light of the facts of each case.
- [19] This is now the rule under Section 12(1), Article III of the 1987 Constitution, which explicitly requires that the waiver of the right to counsel be in writing and made in the presence of counsel, otherwise, the extra-judicial confession is inadmissible (Section 12(3), Article III).
- [20] Sec. 19(1), Article III
- [21] A case like the one at bar argues strongly for the restoration of the death penalty.

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