

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PATROCINIO GERAPUSCO AND ALBERTO QUIDATO, ACCUSED,
ALBERTO QUIDATO, ACCUSED-APPELLANT.**

G.R. No. L-46072. August 22, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

For compulsory review is the Decision of the then Circuit Criminal Court of Roxas City (the Lower Court), finding accused-appellant, Alberto QUIDATO, guilty beyond reasonable doubt of Rape with Homicide and sentencing him to death.

The spouses Leodegario Amias and Estelita Farnazo, were residents of, and living with their children in Tapaz, Capiz. During the night of February 21, 1970, the spouses were shot and killed in their house. On the following day, their bodies were autopsied, and the police authorities took the Statements of their two sons, Nestorio then 11 years old, and Wilfredo then 8 years old.

The autopsy reports showed that the deceased spouses were killed through multiple gunshots. At that time, there was no inkling that the wife had been raped the previous night. Understandably, the autopsy report was silent in this respect.

In his Statement (Exhibit "1"), Nestorio's version of what happened during the night of February 21, 1970 was that:

"x x x, after my father, Leodegario Amias went down our house to dispose, one person, Isaac Gicole, also of Da-an Banwa came upstairs our house and directly proceeded to our room where my mother, two younger brothers and one younger sister were sleeping. I heard Isaac (Gicole) saying. 'Don't jump we will not hurt you'. I jump from our pantao and I saw in our yard three (3) persons. I kept out of their sight by proning in the shaded place where I can not be found. I saw my father going to our house and they met him on the yard. My father Leodegario, asked what they want and they told him to stop walking. I heard my father saying. 'Titong, what will you do with us' and I saw Isaac Gicole came downstairs. He shot my father three times. I ran to the bamboo groves and again I heard two (2) more shots. I ran to the house of my grandfather, Arsenio Farnazo and I told him what happened to my father. x x x."

What is important to note in Nestorio's Statement are:

- (1) During the night of his parents' death, his father, Leodegario, had gone down the house to "dispose"; that is, either to urinate or to defecate.
- (2) While Leodegario was out the house, ISAAC Gicole went up the house, leaving three companions in the yard.
- (3) While Leodegario was returning to the house, he was accosted by the three companions of ISAAC in the yard. It was then that ISAAC went down from the house and shot Leodegario three times.

(4) Nestorio could not have seen, if it was a fact, that his mother was thereafter raped by ISAAC or any two of his three companions.

(5) Of the three companions of ISAAC, only Roberto Gabucay alias "Titong" was identified by Nestorio.

Wilfredo's statement (Exhibit "4") was to the effect that during the night of February 21, 1970, he was awakened by three successive gunshots; through an opening (or window) of their house, he saw four men beside his father in the yard; that with his younger brother, Mario about 6 years old, he went out of the room, leaving behind his mother and younger sister Teresita. He also said that ISAAC fired two shots. What may be specially noted in Wilfredo's Statement are that:

(1) There were four men involved in the killing of his parents, one of whom was ISAAC.

(2) Having left the room with his brother Mario, he could not have seen, if it was a fact, that his mother was raped by any two of the four men involved in the incident.

(3) As in the case of Nestorio, of the other three men, only Roberto Gabucay alias "Titong" was identified by Wilfredo.

Evident from the brothers' individual Statements is that ISAAC was the malefactor. No mention whatsoever of QUIDATO was made.

On February 24, 1970, the Chief of Police of Tapaz initiated criminal proceedings for Double Murder against ISAAC, Roberto Gabucay and John Does, which ultimately became Criminal Case No. CCC-XI-166-Capiz (also for Double Murder) of the Lower Court. ISAAC had been arrested but Roberto Gabucay had remained at large.

In the mentioned case, a re-investigation was subsequently conducted. In the course thereof, Nestorio testified that he had made a mistake in identifying ISAAC as having shot his father and that it was one. Alberto QUIDATO, who was the culprit. As a result of that statement of Nestorio, the Assistant Provincial Fiscal, on March 15, 1971, moved for the dismissal of the charge against ISAAC, also explaining that he could not file a complaint against QUIDATO because "since according to (Nestorio), he knew [the] two (2) persons personally before the incident in question occurred, we find it hard to believe him" (Exhibit "2"). The Lower Court granted the Motion (Exhibit "3") on the date it was filed and dismissed the case as against ISAAC. In the same Order, the Lower Court made a finding that "the only one properly identified by the aforesaid Nestorio Amias is Titong Gabucay, who is still at-large" (Exhibit "3-A").

On May 10, 1971 Patrocinio GERAPUSCO was arrested by the police authorities of Tapaz.

On May 22, 1971, the Chief of Police of Tapaz filed an Amended Criminal Complaint before the Municipal Court of Tapaz charging Alberto Quidato, Isaac Gicole, Roberto Gabucay alias Titong, Teofilo Gicalde, Patrocinio Gerapusco and Ariston Gardose with Double Murder. On the same date of May 22, the Municipal Court, still considering the case to be one for Double Murder, issued the following Order:

"DURING THE preliminary investigation (Second Stage) conducted by this court today, the accused PATROCINIO GERAPUSCO, pleaded NOT GUILTY to the charge, and waived his right to Preliminary investigation. The rest of the accused are still at-large, with the exception of ISAAC GICOLE, who has been previously remitted or forwarded by this Court to the Court of First Instance on March 30, 1970, together with the Original Records of this case.

WHEREFORE, records of this case in so far as the accused PATROCINIO GERAPUSCO is concerned, consisting of 8 useful pages is hereby remitted to the Court of First Instance of Capiz, Branch III, Mambusao, Capiz, for proper action, together with the person of the said accused PATROCINIO GERAPUSCO.

As above stated that the original records of this case has been previously remitted on March 30, 1970, to the 3rd Branch of the CFI, at Mambusao, Capiz, let this case be so remitted to be incorporated with the said original.

SO ORDERED, Tapaz, Capiz.

May 22, 1971."

The Municipal Judge apparently did not know that ISAAC had already been acquitted of the charge of Double Murder.

On October 15, 1971, an Information was filed by the Provincial Fiscal with the Lower Court in its case CCC-XI-227-Capiz (the Case Below) charging GERAPUSCO with Double Murder with Rape. The body of the Information alleged that GERAPUSCO committed the crime charged in the company of "Alberto Quidato, Roberto Gabucay alias Titong, Teofilo Gicalde and Ariston Gardoce who are still at-large." QUIDATO was subsequently apprehended, and he was ordered included in the caption of the Case Below. Roberto Gabucay alias "Titong", Teofilo Gicalde and Ariston Gardoce remained at large.

The testimonies of Nestorio and Wilfredo were heard by Judge Benjamin A. Crisostomo of the Lower Court. During the latter part of the hearings, Judge Fidencio S. Raz heard the testimonies of the two other prosecution witnesses, to wit, Patria Amias, sister of the deceased Leodegario, who testified on what was allegedly told to her by Nestorio and Wilfredo two weeks after the wake, and Julian L. Fuentes, Municipal Judge of Tapaz, who identified the statement of GERAPUSCO. Judge Raz also heard the testimony of defense witness Cicero Jimenez, a councilor of Tapaz.

The prosecution synthesized the testimonies in open Court of Nestorio and Wilfredo, as follows:

"In the evening of February 21, 1970, in Barrio Da-an Banwa, Tapaz, Capiz, all the members in Leodegario Amias' household had retired for the night (tsn, p. 8, Sept. 14, 1973). At about midnight, a voice coming from downstairs was heard in Leodegarios' home calling for 'Nong Loding' referring to Leodegario Amias. When Leodegario Amias heard his name being called, he got up and went down to investigate (tsn, pp. 9, 23, 25, Sept. 14, 1973).

"Downstairs, Leodegario Amias saw the appellant Alberto Quidato and his companions waiting. When Leodegario approached the appellant, the latter suddenly boxed him, causing him to fall down (tsn, pp. 9, 15-16, Sept. 14, 1973). Before Leodegario could do anything, the appellant pulled out a revolver and shot him thrice (tsn, p. 9, Sept. 14, 1973). Two of the shots found their mark in Leodegario's head and left forearm causing his instantaneous death (tsn, pp. 10-12, Oct. 26, 1973; see Exh. B).

"After shooting Leodegario, appellant and one of his companions went upstairs, proceeded to the room of Estelita Farnazo, Leodegario's wife, and finding her there forcibly dragged her into the sale of the house (tsn, p. 12, Sept. 14, 1973). In the sale, the appellant and his companion rape Estelita in such manner that while one was having intercourse with her the other poked a weapon at Estelita to immobilize her (tsn, pp. 13, 14, Sept. 14, 1973). After satisfying their bestial passions, the appellant pulled his revolver, aimed it at Estelita and fired three times. All the shots found their mark, causing Estelita's instantaneous death (tsn, p. 8, Oct. 26, 1973).

"Thereafter, the appellant and his companions left the house and fled (tsn, p. 15, Sept. 14, 1973)".[1]

Contrary to their respective Statements taken the day after the incident, the two brothers in their testimonies before the Court fingered QUIDATO as having killed their father with no mention whatsoever of ISAAC.

For his part, QUIDATO denied any participation whatsoever in the commission of the crime and put up the defense of alibi, relying on the testimony of the sole defense witness his god-brother, Cicero Jimenez, a

municipal Councilor and President of the San Jose Young Teens Club. The latter testified that QUIDATO was attending a benefit dance with him sponsored by his organization at about 8:00 P.M. of February 21, 1970, at Barrio San Jose, Tapaz, Capiz. The witness had invited QUIDATO to be at the dance in order to attend to possible trouble makers. After the dance ended at 3:00 A.M., QUIDATO slept with him at his house, took breakfast with him, and left only at 8:00 that morning.

On March 3, 1977, Judge Raz promulgated the Decision exonerating GERAPUSCO, and convicting QUIDATO of Rape with Homicide and sentencing him to death. The conviction of QUIDATO was based on the testimonies of Nestorio and Wilfredo. Of those testimonies, Judge Raz said:

"x x x. The record does not bear any observation by the trial judge of any hesitancy, artificiality or sign of falsehood in the manner these two minor witnesses declared. There could, therefore, be no cause for doubt as to the credibility of their testimony. x x x."

QUIDATO now faults the Trial court, thus:

"I

"The trial court erred in giving credit to the testimonies of Nestorio Amias and Wilfredo Amias despite the so many inconsistencies and improbabilities therein contained.

"II

"The lower court erred in holding as immaterial the motive of the accused-appellant in committing the crime with which he was charged and of which he was convicted.

"III

"The lower court erred in finding that the crime of rape was committed by the accused-appellant and in convicting him therefor.

"IV

"The lower court erred in finding the accused-appellant guilty of the complex crime of rape with murder and in imposing the capital penalty of death and in not giving credit to the defense of alibi interposed by the accused-appellant."

There is justification for the first assignment of error because there were major discrepancies between the Sworn Statements given by Nestorio and Wilfredo the day after the incident and their testimonies in open Court three years later.

(1) In their written Statements (Exhibits "1" & "4"), both brothers pinpointed ISAAC and Roberto ("Titong") Gabucay as the culprits, with ISAAC singled out as the one who had shot their father Leodegario. In his Statement, when Nestorio was asked whether he knew the two other companions, he categorically replied in the negative adding that it was only ISAAC and Roberto whom he knew. In his Statement, Wilfredo emphatically stated that he knew ISAAC because he used to see him always in the barrio, and he identified him because the room which ISAAC had entered on the night of the incident was lighted by a lamp. Significantly, neither brother made any mention of QUIDATO. There was even a categorical denial of any knowledge of him when Nestorio said he recognized only ISAAC and Roberto. And yet, in their testimonies before the Court, they both positively identified QUIDATO, and QUIDATO alone, as the gunwielder to the exclusion of any other.

To point out other inconsistencies. In his Statement, Nestorio stated that when ISAAC had gone up the house, he jumped out of the "pantao" and from a "shaded place" he saw ISAAC go down the house and shoot his father. In

his testimony at the trial, however, he declared that he saw the shooting from behind a post of the house and that he jumped out only after the shooting.

The younger boy, Wilfredo, for his part, declared in his statement that he was awakened by three successive gun-shots on the night of the incident. His declaration in Court, however, was that he was awakened when his father went down.

Nestorio tried to explain his identification of ISAAC in his written Statement by stating that, on the day of the incident, he had seen ISAAC in the barrio so that when QUIDATO went up their house he mistook him for ISAAC because of his build and the resemblance of the clothes they were wearing. But subsequently, he realized that it was actually QUIDATO and not ISAAC.

However, since in his Statement Nestorio stated that he knew ISAAC well and in his Court testimony he declared that he knew QUIDATO personally and he saw him often in the barrio, how could he have mistaken one for the other?

To extricate himself further, Nestorio completely dis-credited his Statement by stating that the allegations therein were not true and that he committed many mistakes as his mother had just died. If he had been the only eyewitness, perhaps, that could be given credence. But his mistakes and omissions were echoed by his younger brother Wilfredo. A narration of details by individuals could be similar, but identical mistakes and omissions cannot simply be brushed aside as a matter of mere coincidence.

(2) Again, in their respective Statements, neither one of the brothers mentioned the rape of their mother. However, during the trial, they categorically testified that QUIDATO and Roberto Gabucay had raped her, using that very word.

Worthy of recall is that the written Statements of the two brothers were taken the day after the incident when the occurrence could not but have been fresh in their minds. They may have been in grief because of the tragedy that befell their parents but it is most unlikely that such a start-ling occurrence as the alleged rape of their mother could have escaped their minds when they were describing the incident to the investigators.

Rape is such a serious offense that the Court cannot see its way clear to convicting an accused for that crime on the basis alone of the turn-about testimonies of the two minors. It is also not explained in the expediente why in the preliminary investigation of GERAPUSCO for Double Murder, with the Municipal Judge finding probable cause for Double Murder, the accused was charged before the Lower Court with Double Murder with Rape.

The state of the evidence being what it is - QUIDATO's identity as the perpetrator being highly doubtful, the crime of Rape not having been established by sufficient and competent evidence, and the key prosecution witnesses, who were minors, having involved themselves in serious contradictions, the Trial Court's verdict of guilt beyond reasonable doubt cannot be sustained. The judgment is based on a misapprehension of facts, which is a recognized exception to the general rule that the findings of the Trial Court regarding the credibility of witnesses command great respect, specially since, in this case, the deciding Judge did not personally hear the testimony of the key witnesses. In fact, it was error for the latter to have assumed that Judge Crisostomo would put into the expediente his observations as to the credibility of Nestorio and Wilfredo.

With the foregoing findings, there is no need for a discussion of the other assigned errors.

WHEREFORE, the judgment under automatic review is hereby SET ASIDE and the accused Alberto Quidato hereby acquitted on the ground of reasonable doubt. Costs de officio.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Alampay, Gutierrez, Jr., Cruz, and Paras, JJ., concur.

Feliciano, J., no part.

[1] Appellee's Brief, pp. 2-4.

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