

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO MAGALONG Y BUADO, EDUARDO LIM ALIAS "PILAY," AND ARSENIO AQUINO Y GONZALES, ACCUSED-APPELLANTS.

G.R. No. 100125. May 12, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Like a piece of trash the lifeless body of 7-year old Cecilia Arabis was found dumped into a canal and there left to decay, apparently a victim of pedophilic paraphilia.

Romeo Magalong y Buado and Eduardo Lim alias "Pilay" were charged as principals and Arsenio Aquino y Gonzales as accessory in the rape and killing of Cecilia Arabis.[1] All three pleaded not guilty when arraigned.

The prosecution presented as witnesses Pat. Bayani Velasco, Amorosa Francisco and Lilia P. Arabis but dispensed with the testimony of the Rural Health Officer, Dr. Richard A. Patilano, after the defense admitted the authenticity of the Death Certificate[2] and the Autopsy Report of Dr. Patilano.[3]

Before resting his case, however, the public prosecutor moved for the discharge of 16-year old accused Arsenio Aquino to be utilized as state witness it appearing that no eyewitnesses were available to testify directly on the commission of the rape with homicide. Although the trial court initially denied the motion it finally reconsidered its denial and ordered Aquino discharged so he could be a state witness.[4]

Culled from the evidence of the prosecution, 7-year old Cecilia Arabis was living with her mother Lilia Arabis at No. 110 Santolan St., Purok I, Sta. Rita, Olongapo City. Their makeshift house was partitioned into two (2) rooms with the use of a flattened carton. The accused Magalong was staying in the other room together with four (4) other occupants. His two co-accused Eduardo Lim and Arsenio Aquino also lived along Santolan St.

In late afternoon of 17 November 1987 Cecilia went to the house of Arsenio Aquino looking for her mother, a jueteng collector of Aquino's mother Gertrudes. At that time Magalong and Lim, apparently high on marijuana ("sabog"),[5] were with Aquino in the latter's house.

As 7-year old Cecilia entered the house, Aquino noticed Magalong staring at her. Aquino's suspicions were confirmed when Magalong told him to bring her to Aquino's room. There Magalong told Aquino to choke the young girl. Aquino reluctantly obeyed and placed his hands around her neck. Sensing Aquino's hesitation, Lim pushed him against the wall and proceeded to strangle Cecilia himself causing her to gasp for breath and momentarily to lose consciousness. While Lim held Aquino back, Magalong removed the short pants and panties of Cecilia. He then took off his own pants and shirt and forced his penis into her vagina but complete penetration was not possible; instead, amidst the loud screams of Cecilia, Magalong inserted his right middle finger into her organ. As she would not stop shouting, Magalong pressed his shirt against her mouth which suffocated her. As a result, Cecilia suffered cardio-respiratory arrest and died.[6]

Upon realizing that the young victim was already dead, Magalong told Aquino to see if there were persons around

and when informed that there was none, Magalong carried the lifeless body of Cecilia and dumped it in a shallow canal at the back of Aquino's house. With the help of Lim the cadaver was covered with garbage. Both Magalong and Lim warned Aquino against squealing about the incident or he would be killed.[7]

Later that evening Lilia Arabis noticed that her daughter Cecilia was missing. Together with some neighbors she combed the area through the night and the following day but there was no sign of Cecilia. About noon of 19 November 1987 the battered and decomposing body of Cecilia was finally found.[8]

The Autopsy Report of Dr. Patilano showed that Cecilia suffered abrasions and contusions while her vagina was described as "(g)aping, small laceration of the hymen x x x no signs of bleeding." [9] Death was due to "cardio-respiratory arrest, cerebral hemorrhage and multiple injuries, traumatic." [10]

On 23 November 1987, Pat. Velasco of the Integrated National Police of Olongapo City made an ocular inspection of the Aquino residence upon being tipped off by a purok leader that there were bloodstains inside and outside the house.[11] With the permission of the new tenants, Aquino and his mother having moved out after the incident, Pat. Velasco entered the house and found bloodstains on the bedroom wall and on the external wall of the house. After taking photographs of the bloodstains on the walls the police officer placed Aquino under arrest. In a sworn statement made in the presence of his counsel, Aquino implicated Magalong and Lim in the rape and killing of Cecilia who were apprehended and likewise detained by the police.[12]

For his defense, accused Magalong and his witnesses Ana de Leon and Amor Mendoza testified that at five o'clock in the afternoon of 17 November 1987 Magalong was with Amor Mendoza in the house of Ana de Leon to inquire if the latter could baby-sit Mendoza's child. They stayed there for about forty-five minutes after which Mendoza went home and slept. Magalong stressed that at the time of the commission of the crime he was sleeping in his house. On the other hand, accused Eduardo Lim chose not to present any evidence. He filed instead a demurrer to evidence which the trial court denied.

After trial, the court a quo found Magalong guilty as principal of rape with homicide and sentenced him to "reclusion perpetua (life imprisonment)." Lim was likewise convicted but only as an accomplice. He was however similarly sentenced to "life imprisonment." Both Magalong and Lim were ordered jointly and severally to indemnify the heirs of Cecilia Arabis in the amount of P30,000.00 without subsidiary imprisonment in case of insolvency.[13]

In this appeal, Magalong argues that he should not have been convicted on the basis of Aquino's testimony on account of its striking variance with his written sworn statement. Moreover, Aquino falsely testified against his co-accused to shield himself from liability. On the other hand, Lim maintains that in all the testimonies of the prosecution witnesses, not one had directly or indirectly implicated him.

We affirm the conviction of both accused Magalong and Lim. The gratuitous disclaimers and alibi proffered by accused-appellants cannot prevail over the clear testimony of Aquino categorically and positively pointing to them as the perpetrators of the complex crime of rape with homicide.

The reported discordance notwithstanding, the testimony of state witness Arsenio Aquino by and large is worthy of belief. Accused-appellants argue that in his sworn statement Aquino admitted that he smoked five (5) sticks of marijuana, which he disavowed in his direct testimony, but which he again admitted during his cross-examination.[14] Appellants also capitalize on Aquino's inconsistent allegations in open court with regard to the circumstances surrounding the execution of his sworn statement.

But such inconsistencies refer only to collateral matters. We find no contradictions, no vacillations in Aquino's detailed and graphic account of the actual rape and killing which conforms with the undisputed medical findings

and autopsy report of Dr. Patilano, and substantiated by the other prosecution witnesses. Inconsistencies in the testimony of a witness with respect to minor details or inconsequential matters may be disregarded without impairing the witness' credibility.[15]

The court a quo gave full faith and credit to the testimony of Aquino. We should not do any less. Appellate courts accord the highest respect to the assessment of the testimonies of eyewitnesses by the trial court because of its unequaled opportunity to observe on the stand their demeanor and manner of testifying and to detect whether they are telling the truth or not.[16]

Appellant Magalong insists that he could not have been at the locus criminis since he was then in the house of Ana de Leon in Balic-Balic, Sta. Rita, between five and six in the afternoon of 17 November 1987. While we may accept this claim at face value, still it cannot be denied that Magalong could have committed the crime because, as testified to, at barely past six he returned to his residence at No. 110 Santolan St. The distance between Balic-Balic and Santolan St., can be traversed easily in fifteen (15) to twenty (20) minutes. And, according to state witness Aquino, the incident occurred late in the afternoon.

In fine, we are convinced beyond any cavil of doubt that accused-appellants Romeo Magalong and Eduardo Lim raped 7-year old Cecilia Arabis and on the occasion thereof killed her. Had this complex crime been committed after the passage of R.A. 7659, accused-appellants could have been justifiably sentenced to death, and deservedly so, for this is precisely the kind of criminal aberration and perversity that cries out for capital punishment.

The Court strongly disagrees with the conclusion of the court a quo that appellant Eduardo Lim was merely an accomplice, this despite its finding that "on the same occasion the accused Eduardo Lim had helped in the commission of the offense by choking the victim who thereby lost consciousness momentarily. The said accused Eduardo Lim further helped Romeo Magalong after the commission of the offense in dumping the body of the deceased victim x x x in a canal and covering her with trash." [17]

Plainly, it is evident that the degree of Lim's participation in the criminal act went beyond that of an accomplice. He was obviously a principal by direct participation.[18] His act of choking the young victim until she passed out tended directly toward the commission of the rape and was as effective as the sexual assault itself. He personally took part in the performance of acts leading to the accomplishment of the malevolent objective sought by his co-felon.

Once more, we are called upon to correct the notion that "reclusion perpetua" is also known as "life imprisonment." Repeatedly, we have endeavored to impress upon the trial judges that "reclusion perpetua" is not synonymous with "life imprisonment" and that the two (2) penalties are not interchangeable. Unlike "life imprisonment," "reclusion perpetua" carries with it accessory penalties provided in the Revised Penal Code and has a definite extent or duration.[19]

WHEREFORE, the decision appealed from is MODIFIED in that accused-appellants ROMEO MAGALONG y BUADO and EDUARDO LIM alias "Pilay" are both adjudged GUILTY AS PRINCIPALS of the crime of rape with homicide. Both are sentenced to reclusion perpetua and ordered jointly and severally to indemnify the heirs of the victim Cecilia Arabis in the increased amount of P50,000.00 in line with existing jurisprudence. Costs against accused-appellants.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., and Quiason, JJ., concur.
Kapunan, J., on official leave.

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- [1] See Amended Information, Records, p. 6.
- [2] Exh. "E."
- [3] Exh. "F."
- [4] Records, pp. 131-133, 150.
- [5] TSN, 26 May 1989, p. 6; On cross-examination, Aquino admitted that before the victim arrived, they (excluding him) had smoked five (5) joints of marijuana in the alley just outside his house. He however claimed that he only smoked marijuana because he was threatened by Magalong and Lim. See TSN, 15 August 1989, pp. 4-6, 18-20.
- [6] TSN, 26 May 1989, pp. 16-19.
- [7] Id., pp. 20-21.
- [8] TSN, 5 April 1989, p. 14.
- [9] Exh. "F," Records, p. 262.
- [10] Exh. "E," Id., p. 200.
- [11] TSN, 5 April 1989, pp. 11-14.
- [12] Exh. "C," Records, pp. 197-198.
- [13] Decision penned by Judge Nicias O. Mendoza, Regional Trial Court, Br. 74, Olongapo City, Records, p. 275.
- [14] Brief for appellant Magalong, pp. 4-5.
- [15] *People v. Sato*, No. L-47911, 27 July 1988, 163 SCRA 602; *People v. Hacbang*, G. R. No. 75293, 17 August 1988, 164 SCRA 441; *People v. Tunhawan*, G. R. No. 81470, 27 October 1988, 166 SCRA 638.
- [16] *People v. Cortes*, G. R. No. 105010, 3 September 1993, 226 SCRA 91.
- [17] RTC decision, Records, p. 275.
- [18] Art. 17. Principals. - The following are considered principals: (1) Those who take a direct part in the execution of the act; (2) Those who directly force or induce others to commit it; (3) Those who cooperate in the commission of the offense by another act without which it would not have been accomplished. (The Revised Penal Code).
- [19] *People v. Alvarado*, G. R. No. 104399, 20 March 1995, citing *People v. Utinas*, G. R. No. 105832, 22 December 1994; *People v. Malakas*, G. R. No. 92150, 8 December 1993, 228 SCRA 310.

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