

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZALDY CRISTOBAL Y ALBARIN, ACCUSED-APPELLANT.

G.R. No. 100912. July 06, 1995

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from a judgment[*] of the Regional Trial Court, Branch 46, Masbate, Masbate convicting accused-appellant Zaldy Cristobal y Albarin for the rape and killing of Edna Cantubira.

The Information dated 12 January 1990 reads as follows:

"That on or about 22nd day of September 1989, in the evening thereof, at barangay Mabato-bato, Municipality of Mandaon, Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with [a] sharp instrument, by means of force and intimidation and with lewd design, did then and there wilfully, unlawfully, feloniously have carnal knowledge with Edna Cantubira against the latter's will and on the occasion of the rape the said accused with intent to kill did then and there wilfully, unlawfully and feloniously attack, assault and stab said Edna Cantubira inflicting upon the latter serious wounds in the different parts of the body which caused her death.

Contrary to law."[1]

Zaldy Cristobal y Albarin pleaded not guilty when arraigned on 12 March 1990. After trial, the judgment convicting Cristobal of Rape with Homicide was rendered on 18 March 1991, the dispositive part of which reads:

"WHEREFORE, premises considered, the Court finds accused Zaldy Cristobal y Albarin guilty beyond reasonable doubt of the complex crime of Rape with Homicide, penalized under Article 335, as amended, of the Revised Penal Code, and hereby sentences him to suffer the penalty of reclusion perpetua, the accessory penalties thereof, and to indemnify the heirs of the deceased in the amount of P30,000.00 without subsidiary imprisonment in case of insolvency and to pay the cost.

It appearing that the accused is detained in the service of his sentence, he should be credited the full period of his detention.

SO ORDERED."[2]

Appellant Cristobal assigns the following errors to the trial court:

"X X IN GIVING CREDENCE TO THE IMPROBABLE AND INCONSISTENT TESTIMONY OF PROSECUTION WITNESS TERESA CANTUBIRA.

X X X IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE BASED ON CIRCUMSTANTIAL EVIDENCE.

X X X IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE WITH HOMICIDE."[3]

The prosecution presented the following witnesses:

1. Ruben Escota, who testified that at around 8:00 in the evening of 22 September 1989, he and a certain Gerry Bisquillo attended a benefit dance at the town plaza of Mabato-bato, Mandaon, Masbate. At around 11:00 of the same evening, while he and accused-appellant Zaldy Cristobal were on their way home, Cristobal invited him to pass by the house of the victim Edna Cantubira since, according to the accused, Edna was all alone in their house. Escota stated that he refused the invitation since he noticed that Cristobal was quite drunk. He further stated that accused Cristobal was carrying a batangas (fan) knife. Escota testified that he just went straight home to sleep and the next morning, he learned from his sister-in-law that Edna Cantubira was killed the night before.
2. Pedra Cristobal, who testified that on 22 September 1989 at around 5:00 in the afternoon, she was inside her house in Mabato-bato, Mandaon, Masbate when accused Cristobal arrived. She noticed that Cristobal was drunk having just come from a drinking spree. Cristobal then told her that he was going to kill somebody that night. Since Cristobal was her nephew by affinity, she tried to dissuade him from doing anything which, she said, would be shameful. Accused Cristobal apparently ignored her pleas and just left. The following day, she learned that her neighbor Edna Cantubira was killed the night before.
3. Conrado Monterola, who testified that on 22 September 1989 at around 11:00 in the morning, he and accused Cristobal were at the house of a certain Peryong Cumadero having a drinking spree. While Peryong was in the kitchen and only he and Cristobal were left at the table drinking, the latter told him, "Manoy, if something will happen tomorrow, I will kill Edna Cantubira to complete my (v)ow for amulet [sic]". Monterola advised Cristobal not to do it because Cantubira was a girl and she had not done him any wrong. He further testified that Cristobal drank with them until around 3:00 in the afternoon and left when other persons came for the drinking spree.
4. Teresa Cantubira, who testified that in the afternoon of 22 September 1989, she was in her house in Mabato-bato, Crossing Mandaon, Masbate with her four (4) children. Her husband was then away from home having been summoned by their landlord, Mr. Aribon, to harvest his "palay". Edna Cantubira was her sister-in-law who was then living in a house about forty (40) meters away. In the evening of that day, Edna's two (2) brothers asked her to watch their sister since she would be left alone in their house because the two (2) of them would be attending the dance at the town plaza and their parents were then vacationing in Capiz. At about 11:00 in the evening of the same day, she heard a voice she recognized as that of Edna, shouting for help. She then proceeded to Edna's house and, through an open door, she saw accused Zaldy Cristobal completely naked, lying on top of Edna. Teresa further stated that she saw Cristobal repeatedly stab Edna several times and even saw the accused slash the victim's neck using a batangas (fan) knife. She was able to clearly see the accused because a lit kerosene lamp was only about three (3) meters away from the accused. She immediately returned to her own house fearing that Cristobal would kill her. In the early morning of 23 September 1989, she accompanied Edna's brothers to the house where they saw Edna already dead. They then reported the incident to their barangay captain and to a CAFGU member.
5. Dr. Luis L. Aguirre, the Municipal Health Officer of Mandaon, Masbate, who testified to his conducting an autopsy on the body of the victim. His findings which were summarized in his autopsy report[4] showed that the victim suffered no less than 18 incised wounds and 20 stab wounds particularly described as follows:

"x x x x x x x x

1. Incised wound, neck, anterior portion, about 6 inches in length, cutting the trachea and esophagus.
2. Stabbed wound, neck, left, 1 inch in width, 1 1/4 inches deep.
3. Stabbed wound, neck, right, 1 inch in width, 2 inches deep.

4. Incised wound, left mandible, 1 inch in length.
5. Incised wound, right mandible, 1 inch in length.
6. Stabbed wound, 5 in number, left in shoulder.
7. Stabbed wound, left breast 1 1/2 inches in length.
8. Stabbed wound, chest, right, 5 in number.
9. Stabbed wounds, right hypochondriac area, 2 in number, non-penetrating.
10. Stabbed wound, right arm, 1 inch in length.
11. Stabbed wounds, right forearm, 4 in number, 1 inch in length,
12. Incised wound, right thumb.
13. Incised wound, left hand, 1/4 inch in length.
14. Incised wounds, left, pointing and middle fingers.
15. Incised wound, right thigh, 2 in number, 1 inch in length.
16. Incised wounds, right leg, 2 in number.
17. Incised wound, left thigh, about 5 inches in length medial portion.
18. Incised wound, left thigh, lateral part, about 2 inches long.
19. Incised wound, left leg, proximal 3rd, 2 in number.[5]

The lone witness for the defense was the accused-appellant Zaldy Cristobal y Albarin. He denied any knowledge of the crime. He testified that on 22 September 1989, he went to the benefit dance at around 6:30 in the evening. He stated that he was operating the sound system for the dance together with the victim's brother Elvis Cantubira. He further testified that he stayed at the plaza until 5:00 the next morning when he went home with Elvis. Cristobal alleged that Teresa Cantubira testified falsely against him because he had caught her having sexual relations with Ruben Escota. In like manner, Cristobal contended that Pedra Cristobal held a grudge against him since he knew of the intimate relations between Pedra's brother-in-law Ruben Escota and Teresa Cantubira. He also contended that prosecution witness Conrado Monterola had a grudge against him since he refused to sell him certain coconuts which were actually not his.

The prosecution presented Elvis Cantubira as a rebuttal witness. Elvis belied the accused's statement that he was with Elvis operating the sound system for the dance. Elvis testified that at about 6:30 in the evening of 22 September 1989, he and his brother Amer Cantubira brought their sound system to the town plaza for the benefit dance. He stated that the last time he saw the accused at the dance that night was at about 10:00 in the evening.

The Court is aware of the difficulty of prosecuting cases of Rape with Homicide.[6] The nature of the crime of rape, where it is usually only the victim and the rapist who are present at the scene of the crime, makes prosecutions for the complex crime of rape with homicide particularly difficult since the victim can no longer testify against the perpetrator of the crime. In these cases, the evidence against the accused is usually circumstantial.

The case at bench, however, is an exception. Witness Teresa Cantubira testified as an eyewitness to the stabbing of victim Edna Cantubira. The determination of this case therefore lies in the findings of the trial court on the

credibility of witnesses.

The settled rule deeply imbedded in Philippine jurisprudence is that appellate courts will generally not disturb the findings of the trial court on the issue of credibility of witnesses.[7]

In the present case, the trial court gave more credence to the eyewitness testimony of Teresa Cantubira and the testimonies of the other prosecution witnesses who were able to establish the conduct of accused Zaldy Cristobal prior to the commission of the offense (i.e. having a drinking spree, stating that he was going to kill the victim and expressing his intention of going to the victim's house at about 11:00 p.m. of 22 September 1989). We see no reason to disturb the findings of the trial court.

On the other hand, accused Cristobal relied on his bare denial and alibi which were belied by the testimony of rebuttal witness Elvis Cantubira.

On the contention that the crime committed was only homicide, we find nothing to indicate that the trial court erred in convicting the accused of the complex crime of rape with homicide. The killing of the victim by the accused was established by the testimony of Teresa Cantubira which was corroborated by the autopsy report showing the wounds suffered by the victim. The rape, contrary to accused's ratiocinations, was also established by the testimony of Teresa to the effect that she saw the accused lying on top of the victim completely naked in the act of stabbing her. The autopsy report showed fresh hymenal lacerations on the sexual organ of the victim. Considering the above findings of the trial court, it is highly improbable, even ridiculous, to conclude that the accused undressed himself only for the purpose of killing the victim. The physical and testimonial evidence in this case clearly establish accused-appellant's guilt of the crime of rape with homicide beyond reasonable doubt.

The amount of Thirty Thousand Pesos (P30,000.00) awarded by the trial court to the heirs of the victim should however be increased to Fifty Thousand Pesos (P50,000.00), in accordance with prevailing jurisprudence.

WHEREFORE, the judgment convicting the accused-appellant Zaldy Cristobal y Albarin of the crime of rape with homicide is hereby **AFFIRMED** with the above stated modification in the amount of civil indemnity awarded to the victim's heirs, which is raised to P50,000.00. Costs against the accused-appellant.

SO ORDERED.

Davide, Jr., Bellosillo, Quason, and Kapunan, JJ., concur.

[*] Penned by Judge Florante A. Cipres.

[1] Rollo, p. 5.

[2] Rollo, p. 20.

[3] Rollo, p. 57.

[4] Original Records, Exhibit "E".

[5] Original Records, p. 69.

[6] *People v. Alvarez*, G.R. No. 103464, 23 September 1993, 226 SCRA 683.

[7] *People v. Pamor*, G.R. No. 108599, 7 October 1994, 237 SCRA 462.

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