

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PRIMO PELIGRO, ELIAS CORNEA AND WENNIE SEBUGON, ACCUSED-APPELLANTS.

G.R. No. 103233. August 03, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

Accused-appellants Primo Peligro, Elias Cornea and Wennie Sebugon were charged with Rape with Homicide in an Information dated 6 August 1986, committed as follows:

"That on or about the 5th day of April, 1986, in the morning thereof, in Barangay Glamang, Province of South Cotabato, Philippines, and within the jurisdiction of the Honorable Court, said three accused in company with one JUN TUMOR, who is at-large and whose true identity and whereabouts are unknown, conspiring and confederating together and mutually helping one another, armed with bladed weapons, by means of force, violence, and intimi-dation, did then and there have carnal knowledge of one BERNARDITA ABAD without her consent and against her will; that on the occasion or by reason of the aforestated rape and in pursuance of their cons-piracy, said accused did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence with the use of the bladed weapons on the said BERNARDITA ABAD hitting her and inflicting on her several wounds on the various parts of her body, and as a result thereof, said BERNARDITA ABAD died thereafter.

CONTRARY TO LAW."[1]

When arraigned, all three (3) accused pleaded not guilty.

The trial court, in Criminal Case No. 4291, Branch 20, RTC of General Santos City, in a decision dated 24 September 1991, penned by Judge Jose L. Orlino, convicted all three (3) accused of the crime of murder based on circumstantial evidence which was found to be adequate to overcome the constitutional presumption of innocence. The accused were also sentenced to, jointly and severally, pay Buenaventura Abad, the father of the victim, the amounts of Nineteen Thousand Pesos (P19,000.00) for actual damages; Thirty Thousand Pesos (P30,000.00) for moral damages; and Fifty Thousand Pesos (P50,000.00) for death indemnity and to pay One Hundred Pesos (P100.00) to the Government for costs.

The dispositive part of the trial court's decision reads:

"WHEREFORE, in the light of all the foregoing, the court finds accused PRIMO PELIGRO, ELIAS "ELY" CORNEA, and WENNIE CEBUGON (sic) guilty beyond reasonable doubt of the crime of murder and hereby sentences each and all of them to suffer the penalty of reclusion perpetua, to be served by them at the National Penitentiary at Muntinlupa, Rizal. In the computation of their sentence, which must not exceed thirty (30) years, they are credited with 4/5 of their preventive imprisonment.

The Court further sentences them, jointly and severally, to pay Buenaventura Abad, father of murder victim Bernardita Abad, the sums of P19,000.00 for actual damages; P30,000.00 for moral damages; and P50,000.00

for death indemnity in accordance with the policy adopted by the Supreme Court en banc on August 30, 1990 (People vs. Sazor, G.R. No. 89684, September 18, 1990), and P100.00 to the Government for costs.

SO ORDERED."[2]

On appeal, accused-appellants assign the following errors to the trial court:

"1. That the court a quo erred when it did not lend any significance on (sic) the physical condition obtaining the scene of the crime.

2. That the trial court below erred in convicting the accused beyond reasonable doubt."[3]

The facts of the case may be summarized as follows:

On 5 April 1986, at about 6:30 a.m., the victim, Bernardita Abad, a public school teacher of Glamang Elementary School, left the house of her co-teacher Fernanda Delegos, where she and other co-teachers were boarding, Bernardita was supposed to go home that day but she never reached home on 5 April 1986. Her body was found on 13 April 1986 in an advanced state of decomposition.

The testimonies of the witnesses for the prosecution were summarized by the trial court as follows:

"Freddie Tuban x x x swore on the stand that about 7 o'clock in the evening of April 5, 1986, Jun Tumor came to his (Tuban's) house in Upper Matinao, Polomolok, South Cotabato, to invite him to a drinking party at the house of Elias (henceforth referred hereon as Ely as it is by this nickname that he is identified in almost the entire record of the case) Cornea in Upper Matinao x x x. On April 22, 1986, between 11 o'clock and noontime, on his way on foot to the basketball court he met Ely Cornea, who asked him where he was going, to which query he answered that he was going to the basketball court to watch a basketball game. Ely Cornea said that as there were still no people thereat, he would better come with him for a drink at Diding's store, where they drunk up to 1:30 in the afternoon, at which place they would have stayed longer had not the store owner, who noticed them to have had already one drink too many, refused to serve them more.

The two then walked home, but before they parted ways, Ely Cornea asked him why he did not come with Jun Tumor when he went to his house to invite him to their drinking party. x x x. Then Ely Cornea told him that had he only come with them, he would also have been greatly gratified because they raped Bernardita Abad and then killed her. And when he (Tuban) asked him why they had to kill her when she had not done anything against them, Ely Cornea answered that they 'were merely implicated in this matter because this is the plan of Jun Tumor'. Ely Cornea told him that it was he who twisted the knee of Bernardita; that Wennie Sebugon was the one who cut the breast of Bernardita; that it was Primo Peligro and Jun Tumor who killed her, but the four of them raped her.

Freddie Tuban identified Ely Cornea, Primo Peligro and Wennie Sebugon, who were all his 'barkadas' since childhood, on the dock.

Ely Cornea warned him that if he squealed, he would be the next victim. As they were already drunk, he suggested that they parted (sic), and so he went home immediately and went to sleep. Bothered by his conscience for several days on what Ely Cornea had revealed to him, because he also had sisters, he slept one night in the house of Dante Anhao, but still his conscience bothered him and he could hardly sleep. So he decided to tell Dante Anhao that the person who raped Bernardita Abad was his (Dante's) relative x x x.

Cesar Gamutan x x x swore that on April 5, 1986, around 7 o'clock in the morning, on his way on foot from Polo (in Polomolok) to Glamang, 'he met Ely Cornea, Primo Peligro and his two (2) companions and the teacher' 'near the coconut plantation of Adela Deligerio' about 150 meters from Matinao River x x x. At the time he met them, they were walking in single file, with Jun Tumor as the head of the file, followed by Wennie Sebugon, Ely Cornea, Primo Peligro and Bernardita Abad. x x x. That was the last time he saw Bernardita

Abad alive. x x x. The dead body of Bernardita was found at a place about 75 meters from the place where he met the accused and Bernardita x x x. He identified Primo Peligro, Ely Cornea and Wennie Sebugon on the dock. x x x.

Joselito Esteta, x x x swore that 'past 7 o'clock or it as already 8 o'clock', he was on the Matinao River to fetch water and that while thereon (sic), he heard a shout which said 'Jun, Jun, we will pass here' (Jun, Jun dire to agi). Looking up to where the voice came from, he saw Primo Peligro, Ely Cornea, Jun Tumor, and Wennie Sebugon, who is the brother-in-law of Ely Cornea, walking hurriedly from the place where the dead body of Bernardita would later be found. When the four saw him, they turned back and headed up stream on a half run. x x x Joselito Esteta was about 15 meters away from the four when he saw them that morning, and the place where he saw them was about 100 meters from the place where the dead body of Bernardita would later be found on April 13, 1986. He identified the three accused on the dock. x x x Dr. Pasuelo, Municipal Health Officer of Polomolok, testifying for the prosecution, swore that he conducted a post-mortem examination on the dead body of Bernardita Abad which, at the time he conducted the post-mortem examination, was in a state of decomposition (Exhibit 'J', 129) and that Bernardita Abad had been dead for 'more or less one week', and that there 'might be some corruption on the body of the victim', which he meant 'that she must have been sexually attacked'. x x x. The doctor said that he did not examine the private parts of the dead Bernardita Abad which had 'some bloating and some mutilation on the other parts' x x x. The doctor's basis in saying that Bernardita had been sexually attacked before she was killed was 'because of the panty on the leg which is only on one part of the leg' and that 'there is no positive proof' that Bernardita had been sexually abused.

Purok President Rolando Aparis x x x swore on the stand that on May 16, 1986 Dante Anhao told him that Freddie Tuban had told him 'that the persons who raped and killed Bernardita Abad were Ely Cornea, Willy Cebugon, Primo Peligro and Jun Tumor' x x x He asked Freddie Tuban about what he knew of the death of Bernardita Abad, and Freddie Tuban told him that he (Freddie) had met Ely Cornea in front of Diding's store; that after they had drunk, Ely Cornea said to him, 'Freddie, had you gone with us last April 5 at about 7 o'clock in the evening then you would have been happy' and when Freddie Tuban asked why, Ely Cornea said, 'we were the ones who raped the daughter of Buenaventura Abad by the name of Bernardita Abad and after that we killed her' x x x.

Buenaventura Abad, father of the hapless Bernardita, identified the dead body he saw at the Ladera Funeral Parlor to be that of his daughter's x x x. He stated in his sworn statement x x x on April 14, 1986, that he suspected 'Ely Cornea, one alias Jun and one named Primo Peligro' as the ones who murdered and raped his daughter, because these people and 'all those staying inside the house of Cornea' entertained a grudge against him. The Corneas were his neighbors in Upper Matinao, their houses being only 160 to 200 meters from each other. Jun (Tumor) stayed in the house of Maximo Cornea, father of Ely Cornea, but after the death of his daughter, he had never see him again.

Buenaventura Abad ascribed the grudge of those residing in the house of Maximo Cornea against him to this action taken by him against Maximo Cornea x x x Buenaventura Abad lost two goats on March 1, 1986. Around 9:30 to 10 o'clock in the evening of said date, a tricycle heading to the house of Maximo Cornea, father of Ely Cornea, passed by his house. He and his son watched the tricycle for the purpose of seeing what would be loaded in it and to keep watch for its departure. Not long later, the tricycle was moving towards the direction where his house was and when it got near his house, it accelerated speed; it ran so fast that they could not see what its load was.

The following day, March 2, 1986, he went to the Barangay Captain of Silway 8 to report what he had observed the night before. As that was allegedly the seventh case of thievery reported to him by the people of Upper Matinao, the Barangay Captain summoned Maximo Cornea x x x. The first question the Barangay Captain put to Maximo Cornea was what was his relation to Jun Tumor, and Maximo Cornea said that he was not related to Jun. Asked by the Barangay Captain if Jun Tumor worked with him, Maximo Cornea said, no, Jun had no work. And when asked what Jun was therefore doing in his house, Maximo Cornea answered that

Jun was helping him care for his farm animals. Then the Barangay Captain asked him why a visitor of his would only come at night, but would not at daytime, but Maximo Cornea's answer was that his visitor was a good person as he was the companion of his son Ely, to which x x x the Barangay Captain countered: 'Why would you say that he is a good man just because he is the companion of Ely Cornea. Is it not that this Ely Cornea staged a hold-up and wounded Undoy Ampo?'

From that time on his relationship with the Cornea's and with Jun Tumor soured."[4]

The defense on the other hand presented several witnesses among whom were the following:

1. Elias or Ely Cornea who testified that on 5 April 1986, he left the house of Felix Sebugon, where he was staying, at 6 o'clock in the morning to go to work at the Philippine Cotton Corporation. He arrived there at around 7:15 a.m. He denied being with Primo Peligro, Jun Tumor, Wennie Sebugon together with the victim Bernardita Abad on that date. He presented a Time Sheet to show his presence at his place of work on 5 April 1986. He claimed that Freddie Tuban was paid by Buenaventura Abad to testify against them (the accused). He denied having any quarrel with the two (2) prosecution witnesses, Joselito Estita and Cesar Gamutan.[5]
2. Primo Peligro who testified that on 5 April 1986, between 6:30 and 7 o'clock in the morning, he was still asleep and that his father had to wake him up at around 7:30 to tend to their cows. Peligro likewise denied being in the company of Sebugon, Cornea and Tumor on 5 April 1986.[6]
3. Wennie Sebugon who testified that on 5 April 1986 at around 5:30 in the morning, he had to go to Polomolok, South Cotabato to ask his mother for help for his sick child who was suffering from allergies. He said that at 6:30 in the morning he was at his mother's house and Ely Cornea was still there. He stated that he did not know any reason why Freddie Tuban and Joselito Estita would testify against him.[7]
4. Romana Peligro, Primo's sister who testified that on 5 April 1986 while she was still asleep, her mother woke her up to tell her that Maria Diot was waiting for her.[8]
5. Maria Diot who testified that at around 6:30 to 7 o'clock in the morning of 5 April 1986, she was in the house of Mr. and Mrs. Peligro to fetch Romana Peligro and that she heard Romana's father waking up Primo so he could tend to their cows.[9]
6. Delfin Deligero who testified that at around 6:30 in the morning of 5 April 1986, he saw Cesar Gamutan playing basketball but on cross-examination he failed to name the five (5) other persons supposedly playing with Gamutan.[10]
7. Antonio Anhaw who testified that on 5 April 1986 at around 7 o'clock in the morning, Freddie Tuban went to Kalabalol to harvest coconuts. On cross examination however he stated that Freddie went to Kalabalol on 5 March 1986.[11]
8. Mamerto Pacheco who testified that between 6:00 and 7 o'clock of 5 April 1986, he saw the victim, Bernardita Abad walking alone, carrying a plastic bag. On cross examination, he failed to remember the type and color of clothes Abad wore nor the color of the plastic bag. He also failed to identify other persons who passed by that day since he admitted being busy preparing food for his guests.[12]
9. Roman Figura who in a sworn statement executed on 2 July 1986, claimed to have seen the victim, Bernardita Abad walking alone on 5 April 1986. However, in his testimony in court he failed to state whether or not the victim was alone. The relevant portions of his testimony are as follows:

"Q: Now, was she alone or has (sic) Bernardita Abad any companion when you saw her passing by the road which borders the farm of Adela Deligero which you were plowing between the hours of 6:00 and 7:00 in the

morning of 5 April 1986?

A: She was wearing a skirt and blouse.”[13]

The prosecution and the defense in the case at bar presented totally different versions regarding the whereabouts of the three (3) accused in the morning of 5 April 1986. The issues therefore can be limited to: (1) the credibility of witnesses and (2) whether the circumstantial evidence is adequate to overcome the constitutional presumption of innocence.

The settled doctrine in this jurisdiction is that an appellate court will not disturb the factual findings of the trial court, especially as to the credibility of witnesses, as the latter is in a better position to decide the question, having heard the witnesses themselves and having observed their demeanor and manner of testifying during trial, unless it is shown that the trial court overlooked certain facts of substance and value which, if considered, might affect the result of the case.[14]

After a close and careful review of the records of this case, including the testimonies of more than twenty (20) witnesses contained in more than five hundred (500) pages of transcripts of stenographic notes, the Court finds no compelling reason to disturb the findings of the trial court on the credibility of the witnesses. It should be noted that none of the witnesses for the defense was able to show any ill motive on the part of the prosecution witnesses to falsely testify against the three (3) accused. The trial court believed the version of the prosecution that the three (3) accused together with one Jun Tumor, who remains at-large, were with the victim, Bernardita Abad on 5 April 1986, the day she disappeared, at the area where Abad's decomposing body would later be found.

Having settled the issue of credibility of witnesses, the innocence or guilt of the three (3) accused should now be determined, based on the circumstantial evidence established. The sufficiency of circumstantial evidence must be determined upon the particular circumstances of each case. All the facts and circumstances are to be considered together as a whole and the totality of these circumstances must be consistent with the guilt of the accused, if conviction is to be imposed.

No general rule has been formulated as to the quantity of circumstantial evidence which will suffice. What is required is that the circumstances proved must be consistent with each other, and at the same time inconsistent with the hypothesis that the accused is innocent, and with every other rational hypothesis except that of guilt.[15]

The trial court's decision was based on the following circumstances:

1. Ely Cornea, Wennie Sebugon and Jun Tumor harbored resentment and grudges against Buenaventura Abad, the victim's father, because the latter suspected them of stealing his goats and he had brought these suspicions to the attention of the Barangay Captain.
2. On 5 April 1986 at around 6:30 in the morning, the victim Bernardita Abad left her boarding house in Glamang to go home to Matinao.
3. On 5 April 1986 at around 7:00 in the morning, Cesar Gamutan met Ely Cornea, Primo Peligro, Wennie Sebugon and Jun Tumor walking with Bernardita Abad on a road about 75 meters from where the dead body of Bernardita would later be found on 13 April 1986.
4. On 5 April 1986 at around 8:00 o'clock in the morning, while Joselito Estita was fetching water near the Matinao River, he heard a loud voice saying, "Jun, Jun, we will pass here." ("Jun, Jun, dire ta agi") and, upon looking up, he saw Primo Peligro, Ely Cornea, Jun Tumor and Wennie Sebugon hurriedly running from the place where the dead body of Bernardita Abad would later be found on 13 April 1986. When the four (4) accused saw him (Estita) they turned around and headed for the opposite direction on a half-run.

5. Bernardita Abad did not get home on 5 April 1986.
6. Bernardita Abad had not been the victim of robbery since her things were not taken.
7. On 14 April 1986, one (1) day after the dead body of Bernardita was recovered, Ely Cornea secured a copy of the time sheet and a certification from his place of employment for no apparent reason.
8. Jun Tumor, who had been staying at the Cornea house suddenly disappeared upon the discovery of the body of Bernardita Abad.[16]

We have carefully reviewed the records of the case before us and we are convinced that the guilt of the three (3) accused has been proved beyond reasonable doubt. The circumstances established coupled with the trial court's finding of credibility of the prosecution witnesses are sufficient to overcome the Constitutional presumption of innocence.

Finally, we agree with the trial court when it stated that:

"But a word on the failure of the Office of the Provincial Prosecutor to include Jun Tumor in the indictment. The Court laments this fact. The Office of the Provincial Prosecutor should have included Jun Tumor in the charge so that the Court could have issued a warrant for his arrest. x x x. The Office of the Provincial Prosecutor should have issued a subpoena to Jun Tumor, attaching the complaint, affidavits and other supporting documents requiring him to submit his counter-affidavit within ten (10) days from receipt of the subpoena. x x x.

Paragraph (d) of Section 3, Rule 112 of the Rules of Court says:

'(d) If the respondent cannot be subpoenaed, or if subpoenaed does not submit counter-affidavits within the ten (10) day period, the investigating officer shall base his resolution on the evidence presented by the complainant.'[17]

It is to be noted that the investigating judge recommended the filing of charges of murder against all the four (4) accused including one alias June Tormon also known as Jun Morados who at the trial turned out to be Jun Tumor. However, the Information charged only the three (3) accused, namely, Cornea, Peligro and Sebugon. The result, as correctly noted by the trial court, is that only another investigation entailing another examination of the witnesses can bring Tumor to justice. This, of course, could have been avoided as Tumor could have properly been included as one of the accused in the information.

WHEREFORE, based on the foregoing, the decision appealed from is hereby **AFFIRMED** with costs against the appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Nocon, and Puno, JJ., concur.

[1] Rollo, p. 13

[2] Rollo, p. 61

[3] Ibid., p. 75

[4] Rollo, pp. 31-37

[5] Rollo, pp. 37-38

- [6] Ibid., pp. 38-39
- [7] Rollo, pp. 39-40
- [8] Ibid., p. 49
- [9] Ibid., p. 50
- [10] Ibid., p. 51
- [11] Ibid., pp. 51-52
- [12] Rollo, p. 52
- [13] TSN, p. 247
- [14] People vs. Bechayda, G.R. No. 72001, 7 August 1992, 212 SCRA 336
- [15] People vs. Aldeguer, G.R. No. L-47991, 3 April 1990, 184 SCRA 1
- [16] Rollo, pp. 58-59
- [17] Rollo, p. 61

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