

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS.
MODESTO CABUANG Y FLORES, NARDO MATABANG Y SALVADOR,
JOHN DOE AND RICHARD DOE, DEFENDANTS/APPELLANTS.**

G.R. No. 103292. January 27, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

Accused Modesto Cabuang and Nardo Matabang appeal from the judgment of the Regional Trial Court, Branch 57 of San Carlos City, Pangasinan finding them guilty of robbery with rape and homicide, and imposing upon each of them a prison term of reclusion perpetua. They were also ordered to pay, jointly and severally, to the mother of the victim an indemnity of P50,000.00; the sum of P400.00 as the amount of money taken by the accused from the victim; the amount of P10,000.00 as moral damages; the sum of P46,495.00 as funeral expenses; and the costs of the suit.

The facts as found by the trial court may be summarized as follows.

On 14 October 1988, at around 11 o'clock at night, Evelyn De Vera and her cousin Maria Victoria Parana, both 19 years of age, having come from a house of a common friend, one Mia Colisao, were walking home along an uninhabited place in Barangay Buenlag I of Bayambang, Pangasinan. Suddenly, from out of the rice paddies along the road, Modesto Cabuang emerged with a flashlight and asked them where they were going. Evelyn became very anxious and started walking faster. Upon the other hand, Maria Victoria started talking to Modesto. When Evelyn was about ten (10) feet ahead of the two, she looked back and saw Modesto turn and shift his flashlight to the rear, illuminating the figure of Nardo Matabang, who had also suddenly appeared behind them from the rice fields alongside the road. Modesto then put off and pocketed his flashlight, grabbed Maria Victoria and covered her mouth. Nardo Matabang in turn pursued Evelyn, who had started to run away. She ran and ran until she entered the yard of a house along the road and hid in the shadows of the plants and shrubs inside the yard where she could not be seen by Nardo, but from where she could see him. After some time, having lost sight of Evelyn, Nardo went back and rejoined Modesto.

Sometime later, Evelyn from her hiding place saw a tricycle pass by with her cousin Maria Victoria, and Modesto Cabuang, Nardo Matabang, the tricycle driver and another person who was seated at the back of the tricycle. Evelyn heard her cousin crying and pleading for help. After the tricycle had passed by, Evelyn emerged from her hiding place and proceeded to the house of her sister. There she was scolded by her sister for coming home late. Evelyn, confused by the scolding and frightened by what she had just seen and experienced, was not able to tell her sister what had just occurred. She stayed in the sala and there tried to go to sleep, without success.

The following morning, Maria Victoria was found dead along the road, naked, with stab wounds in different parts of her body including the pubic area. In the course of their investigation, the police interrogated Evelyn de Vera. Evelyn executed a sworn statement where she identified two (2) of the suspects as Modesto Cabuang and Nardo Matabang. She stated that she could readily identify them because the latter were her barangay mates and hence

knew them well. Moreover, when Modesto Cabuang suddenly emerged from the rice paddies, he was only about two (2) meters away from her. Nardo Matabang was clearly seen by Evelyn from behind the plants in the yard where she crouched in concealment, there being lights illuminating the road in front of the yard.[1] Later, Evelyn was again able positively to identify and point out Cabuang and Matabang from a police line-up. However, the two (2) other suspects, i.e., the tricycle driver and the person who rode at the rear of the tricycle remained unknown and at large.

On 17 October 1988, the third day after the tragic night, the police found a book ("Laboratory Manual in Organic Chemistry") and some articles of feminine underwear and other personal belongings of a woman scattered some 50 to 100 meters away from where they had first found Maria Victoria's body. Evelyn viewed these belongings and identified them as owned by her cousin Maria Victoria who was a student at the Philippine Women's University (PWU). Examination of the personal belongings so found also showed that cash in the amount of P400.00, in Maria Victoria's possession the night before, was missing.

Dr. Nario Ferrer, a physician resident in Bayambang, Pangasinan, conducted an autopsy on the body of the victim. He rendered an autopsy report which show the following findings:

"Incised wound, 4.0 cm superficial, anterolateral aspect neck (R);

'Contusion hematoma, 1 x 1 cm. mid clavicular area (L);

'Stab wound, 1.5 cm. 5th ICS, parasternal line (L), penetrating, perforating the heart at the ventricular level lacerating the lingular part of the (L) lung;

'Hematoma, mediastinum;

'Hemopericardium, 300 cc;

'Hemothorax (L) - 2 liters;

'Stab wound, 1.5 cm. 7th ICS, para-vertebral line (R), penetrating and lacerating the posterior basal part of (R) lung;

'Hemathorax (R) 1 liter;

'Incised wound, 3.0 cm. 2 points, 'parallel to each other, mons pubis;

'Incised wound, 3.0 cm. posterior fourchet of the vagina, transecting the perineum down to the anal canal;

'Vagina with blood clots with fecaloid material;

'Hymen - carunculated. '"

The report also noted the stab wounds in the pubic region including the area between the vagina and the anal canal, as well as the presence of lacerations and spermatozoa in the victim's vagina, indicating that Maria Victoria had been raped and mutilated. Dr. Ferrer identified four (4) of the wounds as mortal in character, which wounds were produced by a sharp edge and a pointed object. The cause of the death was listed as "hypovolemic shock" resulting from severe decrease in the volume of blood supply, producing death about six (6) hours before the autopsy.[2]

On the basis of the foregoing evidence, and primarily on Evelyn de Vera's sworn statement which she later repeated in substantially identical terms before the trial court. Modesto Cabuang and Nardo Matabang were convicted of the crime of robbery with rape and homicide.

In the present appeal, appellants principally urge that the trial court had erred in finding that prosecution witness

Evelyn de Vera had positively identified Modesto Cabuang and Nardo Matabang as the assailants of Maria Victoria. Appellants point to the entry in the Bayambang police blotter found on page 483, Entry No. 4436, Volume IV, Series of 86 (Exhibit "I") which stated that the assailants were "still unidentified" although the entry was made after prosecution witness Evelyn de Vera was questioned by the police. Accused accordingly argue that Evelyn de Vera had never identified the appellants as the assailants of Maria Victoria who in fact had later to identify them from a police line-up.

We consider this contention bereft of merit. Upon receiving the report that a dead body was found in Barangay Buenlag I, members of the Bayambang Police Station immediately proceeded to the reported crime scene on the morning of 15 October 1988. The police investigator, Pfc. Elegio Lopez, who initially questioned witness De Vera that morning, noticed that she was in a state of shock.[3] He accordingly chose to defer further questioning until the afternoon of the same day when Evelyn had calmed down sufficiently to be able to give a sworn statement to the police. Thus, there was the initial report prepared and recorded in the police blotter[4] at around 11 o'clock in the morning stating that the assailants were still unidentified; there was, upon the other hand, Evelyn de Vera's sworn statement[5] made and completed in the afternoon of the same day, where she revealed the identities of the men she had seen the night before and who she believed were responsible for the rape and death of her cousin Maria Victoria.

The failure of Evelyn to specify the accused-appellants as the doers of the horrific rape, killing and robbery of Maria Victoria the first time she was questioned by the police, does not adversely affect her credibility. It is firmly settled case law that the delay of a witness in revealing to the police authority what he or she may know about a crime does not, by itself, render the witness' testimony unworthy of belief.[6]

In *People v. Savellano*,[7] appellant Savellano argued that since the complaining witness had reported to the police authorities the matter of her husband's death and identified the Savellanos' as her husband's killers only after the lapse of two (2) days, rather than immediately when she had the very first opportunity to do so while the police was conducting an "on the spot" investigation, the credibility of her testimony was greatly weakened. This Court rejected this argument stating that:

"It is quite understandable when the witnesses do not immediately report the identity of the offender after a startling occurrence more especially when they are related to the victim as they just had a traumatic experience. x x x [A] delay of about a few hours before the identification of the offender by the prosecution witnesses does not thereby affect their credibility." [8]

In *People v. de Guzman*,[9] the accused-appellant sought to capitalize upon the fact that the prosecution witness did not volunteer the information covered by her testimony to the policeman who had investigated the crime immediately after the murder was committed. Disposing of this contention, this Court ruled that:

"The initial reluctance of witnesses to volunteer information about a criminal case and unwillingness to be involved in criminal investigations due to fear of reprisal [are] common occurrence[s] and [have] been judicially declared as not affecting their credibility, x x x.

xxx xxx xxx

The testimony of Gloria should be given full weight and credit. Her failure to give a sworn statement to the police should not be taken against her. There is no law which requires that the testimony of a prospective witness should first be reduced into writing in order that her declaration in Court at a later date may be believed by the Judge." [10]

The above rulings apply squarely to the case at bar. Evelyn de Vera was clearly traumatized, in a state of shock, upon finding out that her cousin who had been with her just the night before; was brutally raped and killed. She

could not then and there clearly and calmly recount the events she had experienced and witnessed that dreadful night in a logical sequence. The few hours delay which lapsed from the time the entry in the police blotter was made, up to the time Evelyn gave her sworn statement on the afternoon of the same day, did not have the effect of eroding the intrinsic credibility and strength of that statement. It may be noted that significantly longer delays in informing investigating officers of what witnesses had seen, have been held understandable by this Court and as not, in themselves, destructive of the otherwise credible character of such testimony, especially where the witnesses' fear of possible retaliation from the accused could not be dismissed as merely fanciful.[11]

It remains only to note that entries in a police blotter, though regularly done in the course of performance of official duty, are not conclusive proof of the truth of such entries. In *People v. Santito, Jr.*, [12] this Court held that entries in official records like a police blotter are only prima facie evidence of the facts therein set out, since the entries in the police blotter could well be incomplete or inaccurate. Testimony given in open court during the trial is commonly much more lengthy and detailed than the brief entries made in the police blotter and the trial court cannot base its findings on a police report merely, but must necessarily consider all other evidence gathered in the course of the police investigation and presented in court.[13] In the case at bar, we conclude that prosecution witness Evelyn de Vera did positively and clearly identify Modesto Cabuang and Nardo Matabang as among those who had raped and killed and robbed the hapless Maria Victoria Parana.

Appellants also set up the defenses of denial and alibi. Cabuang denied having had anything to do with the rape and killing of Maria Victoria. He said that he was at the wake of the daughter of one Ben Juinio of Barangay Buenlag I, the whole night of 14 October 1988 and until 6:30 in the morning of the following day. Cabuang was, however, unable to offer any details in elaboration or corroboration of his claim of alibi. Matabang, for his part, testified that on 14 October 1988, he was in his house in Karanglaan, Dagupan City, with his wife, his sister-in-law, and his child and had never left his house. He testified further that he left his home for Bayambang only on the next day, 15 October 1988. His testimony was, however, found by the trial court to be flawed by discrepancies and inconsistencies and by lack of sufficient corroboration.

The firmly settled doctrine is that the defense of alibi cannot prosper, unless the accused is able to prove that he was at some other place during the commission of the crime and that it was impossible for him to have been at the scene of the crime at the time of its commission.[14] Clearly, neither of the appellants was able to do so in the case at bar. Modesto Cabuang was supposedly attending the wake held in the same barangay where Maria Victoria was ravished and killed and robbed. Nardo Matabang, upon the other hand, was allegedly at home in a town no more than an hour or so by bus from Bayambang.

It is equally settled doctrine that positive identification must prevail over simple denials and unacceptable alibis. Appellants have not even tried to suggest that Evelyn de Vera might have had some ill motive to testify falsely against them. To the contrary, she had all the reasons to speak the truth with respect to her cousin's ravishers and killers. When there is no evidence to indicate that the principal witness for the prosecution was moved by improper motives, the presumption is that such witness was not so moved, and that her testimony is entitled to full faith and credit.[15]

It is, of course, true that Evelyn de Vera did not witness the actual sexual assault and slaying of Maria Victoria nor the taking of the P400.00 missing from Maria Victoria's belongings. The evidence presented by the prosecution witness was circumstantial in nature. But circumstantial evidence can be and often is entirely sufficient to support a conviction, where the multiple circumstances are proven and are consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that the accused is innocent, as well as incompatible with every rational hypothesis except that of guilt on the part of the accused.[16] In brief, the circumstances must produce conviction of guilt beyond reasonable doubt.[17]

In the case at bar, the circumstances forming an unbroken chain and leading to the conviction beyond reasonable doubt that Cabuang and Matabang, among others, were guilty of robbery with rape and homicide, were the following:

1. While Evelyn de Vera and Maria Victoria Parana were walking home through an uninhabited place at about 11 o'clock at night on 14 October 1988, accused Cabuang and Matabang suddenly appeared from the surrounding rice fields. Cabuang grabbed Maria Victoria and covered her mouth. Evelyn ran away because she became terribly frightened and Matabang followed in pursuit. Matabang lost sight of Evelyn along the road.
2. From her hiding place in the front yard of a house along the road, Evelyn saw Maria Victoria pass by in a tricycle with the accused Cabuang, Matabang and two (2) other men and heard Maria Victoria crying and pleading for help. Evelyn clearly recognized Cabuang and Matabang, but not the other two (2).
3. Early the next morning, on 15 October 1988, the body of Maria Victoria was found in the barangay traversed by the road on which Maria Victoria were walking the night before.
4. The claims of alibi by Cabuang and Matabang were not successfully established. Cabuang acknowledged that he was in the same barangay where Maria Victoria had been assaulted and killed, while Matabang asserted that he was in his house in Dagupan City which was no more than an hour or so by bus from the scene of the crime. Neither Cabuang nor Matabang offered and presented independent and reliable corroboration of their presence far away from the scene of the crime at the time of occurrence of the crime.

The trial court found the circumstances, considered together, as adequate to prove appellants' guilt beyond reasonable doubt. This Court agrees, having been unable to find any reason for overturning this conclusion of the trial court.

WHEREFORE, the decision of the trial court finding the accused-appellants Modesto Cabuang and Nardo Matabang guilty beyond reasonable doubt of robbery with rape and homicide and sentencing the accused to reclusion perpetua is hereby **AFFIRMED** in toto except that the indemnity is hereby **INCREASED** from P50,000.00 to P100,000.00 considering that Maria Victoria Parana was not only raped but also brutally mutilated and killed by the accused. Costs against appellants.

SO ORDERED.

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

[1] TSN, September 6, 1989, p. 8.

[2] Exhibit "F," "H," "I" and "J;" Record, pp. 355-357.

[3] TSN, 22 February 1991, pp. 6-9.

[4] Records, p. 306.

[5] Id., p. 3.

[6] *People v. Mandapat*, 196 SCRA 157 (1991); *People v. Basilan*, 174 SCRA 115 (1989).

[7] 198 SCRA 196 (1991).

[8] 198 SCRA at 207, citing *People v. Gamboa*, 194 SCRA 372 (1991).

[9] 194 SCRA 626 (1991).

[10] 194 SCRA at 626-627.

[11] In *People v. Valdez*, 159 SCRA 157 (1988), the victim's mother gave her sworn statement ten (10) days after the crime while the victim's brother gave his statement 13 days after the crime. This Court nonetheless upheld the ruling of the trial court that their testimonies were positive, credible and reliable.

[12] 201 SCRA 87 (1991).

[13] *Ford v. Court of Appeals*, 186 SCRA 21 (1990); *People v. Roca*, 162 SCRA 696 (1988).

[14] e.g., *People v. Pugal, et al.*, G.R. No. 90637, October 29, 1992; *People v. Muñoz*, 163 SCRA 730 (1988).

[15] *People v. Belibet*, 199 SCRA 587 (1991); *People v. Doctolero*, 193 SCRA 632 (1991).

[16] *People v. Alabaso*, 204 SCRA 458; *People v. Maravilla*, 167 SCRA 645 (1988).

[17] Rule 133, Section 2, Revised Rules of Court.

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