

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO MAGANA, ACCUSED-APPELLANT.

G.R. No. 105673. July 26, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Circumstantial evidence adduced by the prosecution in this case was more than sufficient to convict the accused-appellant of rape with homicide. But beyond affirming the correctness of the trial court's decision and reiterating familiar legal doctrines, we declare that in this instance, the ruthlessness and viciousness exhibited by appellant in carrying out his dastardly design upon a hapless minor most certainly warrants the imposition of the severest punishment possible. We also note with considerable frustration and anxiety that this case is only one among a host of others, constituting a veritable floodtide of crime and immorality which seemingly signals an unstoppable regression to the law of the jungle, where anyone is free to grab and take whatever he pleases.

This is an appeal taken from the decision of the Regional Trial Court of Daet, Camarines Norte, Fifth Judicial Region, Branch 38,[1] in Criminal Case No. 6919 entitled "People vs. Antonio Magana." The trial court found the accused (appellant herein) guilty beyond reasonable doubt of the special complex crime of rape with homicide and sentenced him to "imprisonment for life (Reclusion Perpetua)".[2]

The Facts

At about 6:00 a.m. of January 14, 1991, 14-year old Odette Sta. Maria left for school, as usual taking the feeder road which is about 2 1/2 km. from Sierra Bros. From there, she would have gotten a ride to school.

At about 7:00 a.m. that morning, Danilo De Austria saw accused-appellant "strangling the victim" with his left arm by the side of the feeder road. De Austria was about to untie his carabao before reporting the incident to the authorities, but he was immediately accosted by the appellant who poked a knife at him, threatening to kill him if the family of the victim would come to know of the matter.

The victim's mother, Lucia Sta. Maria, got worried when at 5:00 p.m., her daughter was not with the other kids returning from school. She and her husband started to ask around for Odette, and learned that she did not even make it to school that day. Together with De Austria and some neighbors, they searched for Odette. At about 9:00 p.m., they found the body of the girl sprawled on the ground some twenty meters from the site of that morning's incident. The body was muddy, the face swollen, with hack wounds on the neck. Half of the victim's body was covered with cut grass. Her skirt was raised upward; her panty had been removed and was found near the body.

Post-mortem examination conducted by Dr. Marcelito B. Abas, Municipal Health Officer of Labo, Camarines Norte, showed that the victim sustained hacking wounds on the neck, hematomas on the head, body and left arm, and multiple laceration of the hymen. The cause of death was "shock hemorrhagic due to the hacking wound on the neck". The time of death was estimated at approximately 12 to 24 hours prior to the time of autopsy.

After the burial of the victim, De Austria revealed to the Sta. Marias what he witnessed that fateful morning.

Accordingly, on March 7, 1991, an Information was filed charging appellant with rape with homicide. It reads:

"That on or about 7:00 o'clock in the morning of January 14, 1991, at Mahawanhawan, Municipality of Labo, Province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo and with the use of a piece of wood, and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one ODETTE STA. MARIA, a girl of 14 years old (sic), against the latter's will; that on or after the commission of said offense, said accused did then and there willfully, unlawfully and feloniously, with deliberate intent to kill and with evident premeditation and taking advantage of his superior strength, assault, attack, hack and hit said Odette Sta. Maria, thereby inflicting upon the latter serious and mortal wounds which were the proximate cause of the death of said Odette Sta. Maria, to the damage and prejudice of the heirs of the victim.

"All contrary to law, and with the aggravating circumstances that the said offense was committed in uninhabited place being a grassy area and the victim not having given provocation for the offense." [3]

On February 7, 1992, the trial court found appellant guilty beyond reasonable doubt:

"WHEREFORE, premises considered, this Court finds accused Antonio Magana guilty beyond reasonable doubt of the special complex crime of Rape with Homicide and hereby sentences him to the penalty of DEATH. However, in view of the suspension of the death penalty, accused is hereby sentenced (sic) imprisonment for life (Reclusion Perpetua). And, he is hereby ordered to indemnify the heirs of the deceased the amount of FIFTY THOUSAND PESOS (P50,000.00) for her death, THIRTY-NINE THOUSAND PESOS (P39,000.00) as liquidated damages, TWENTY THOUSAND PESOS (P20,000.00) as moral damages and TEN THOUSAND PESOS (P10,000.00) as exemplary damages." [4]

Hence, this appeal.

Version of the Prosecution

The prosecution's theory is that on that fatal morning appellant was lying in wait for the victim, and when she passed by on her way to school, appellant forced her to go with him by strangling or choking her and threatening her with a bladed weapon, the same one used on De Austria. Then, he forced himself on her. Afterwards, he hacked her neck, thereby killing her. He attempted to hide the body of the victim by covering it with cut grass. He also threatened to kill De Austria to prevent the latter from telling on him.

The prosecution presented the testimonies of the following witnesses: Dr. Marcelito Abas, Municipal Health Officer of Labo, Camarines Norte, Danilo De Austria, Lucia Sta. Maria, Fe Caramoan Juanson, and Antonio Vasquez.

Dr. Abas testified that the victim sustained a hacking wound on the right side of the neck; an incised wound above the first wound parallel to each other; multiple hematomas of both eyes, both cheeks, left forehead, and left chin; "multiple hematomas right chest, both scapular region (sic) of the back, left upper extremity posterior aspect with fracture of both radius and ulna, middle portion;" and multiple laceration of the hymen at 4, 6 and 8 o'clock. [5] Also, when he conducted the autopsy, the victim was not wearing underwear. [6] Dr. Abas was of the opinion that the victim died approximately 12 to 24 hours before the post-mortem examination which was conducted at 8:30 a.m. of January 15, 1991, and that death could have occurred at about 7:00 a.m. of January 14, 1991. [7] The hacking wound, he said, was caused by a sharp instrument, but the hematomas were inflicted with a blunt instrument. He also testified that the multiple lacerations in the victim's hymen, which were probably inflicted just before the hacking, indicated the possibility of rape. [8]

Danilo De Austria, a farmer and resident of Mahawanhawan, Labo, Camarines Norte, was familiar with both the appellant and the victim. He testified that on that fateful morning, at about 7:00 a.m., while he was walking along

the feeder road towards the ricefields in Barangay Mahawanhawan, he espied the appellant and the victim some forty meters ahead of him.[9] He was shocked to see appellant strangling the victim with his left arm.[10] Before he could make a move, appellant blocked his way, poked a double-bladed weapon at him and threatened to kill him if he told the Sta. Marias of the incident. He said, "Yes, yes" because he was "over-frightened" of the appellant. He knew appellant to be abusive whenever he was drunk.[11]

De Austria further testified that the vicinity where he saw appellant assaulting the victim was uninhabited, and that cries for help would go unheard; that the person working the ricefields in that area was none other than accused-appellant himself; and that the body of the victim was found in a grassy area five meters from the feeder road, and about twenty meters from where the victim was seen being strangled.[12] De Austria also revealed that some ten days after the killing, both he and the appellant were abducted and interrogated by the NPA, and that he heard appellant admit to the NPAs that he had raped the girl.[13]

Lucia Sta. Maria, mother of the victim, testified that about a week before her daughter's death, they met appellant, and Odette complained that appellant was staring at her in a "bad way." The victim informed her that appellant would look at her that way everytime they met.[14]

Fe Caramoan Juanson, a neighbor, testified that while she was grazing her carabao, she saw appellant standing on the feeder road at about 6:30 a.m. that day. Appellant, who was wearing a faded jacket, appeared uneasy, looking left and right and towards the hinterland of the barangay, seemingly waiting for somebody.[15] The place where she saw appellant waiting was very near the place where the body of the victim was recovered.[16]

Antonio Vasquez, martial arts instructor of the victim's brother-in-law, spent the night of January 13, 1991 at the house of the Sta. Marias, and left at about 6:10 a.m. the following morning to go back to Labo. He took the feeder road and saw the appellant, whom he met many times and knew by face and whom he positively identified in court, standing quite near the place where the victim's body was subsequently recovered. Appellant appeared to be uneasy and was pacing back and forth; he seemed to be looking for something. The witness noticed that appellant wore a faded brown jacket at that time.[17]

Version of the Defense

The defense's theory consists of establishing an alibi for appellant and implicating Danilo De Austria as the perpetrator of the crime. The following witnesses were presented, viz., Merly Mahipos, Wilfredo Chavez, Jaime Chavez, Jovita Paquita, and the appellant himself.

Mahipos, 35, married and a resident of Sierra Bros, testified that on January 14, 1991, at about 6:30 a.m., she and her husband were walking from Sierra Bros to Mahawanhawan, a distance of two kilometers (about thirty minutes on foot) they met the victim and Danilo De Austria.[18] The latter were not yet halfway on the road to Sierra Bros and about 50 meters from the house of Mahipos' parents. The victim was walking ahead of De Austria by about seven (7) arms length.[19] She asked the victim why she was alone and the victim only smiled. De Austria walked fast and carried a bolo ("sinampalok") about eighteen inches long.[20] He was wearing a white T-shirt and black short pants. She did not see appellant, however.

Wilfredo Chavez, 31, married, a farmer and resident of Mahawanhawan, testified that at about 6:00 a.m. of January 14, 1991, while he was at home, he saw De Austria and the victim pass by, with the victim ahead of De Austria by about seven (7) arms length.[21] He did not see appellant that morning.

Jaime Chavez, 42, married, a farmer and likewise a resident of Mahawanhawan, testified that on that day, at about 6:30 a.m., he was in his house situated beside the feeder road, waiting for his co-laborers to arrive as they were supposed to go gold panning at Jose Panganiban, Camarines Norte. He saw the victim (in her school uniform)

pass by, followed closely by De Austria at about 6:30 a.m.[22] After five (5) minutes, Mahipos and her husband passed by, going the other way. He further testified that appellant came to his house at about 7:00 a.m. and asked that he be included in the gold panning activity. Appellant stayed in his house for an hour and left at around 8:00 a.m. together with Kagawad Jovita Paquita to buy cigarettes at Sierra Bros.[23] He later saw appellant in Sierra Bros at about 9:00 a.m. He also testified that the place where appellant worked was about half a kilometer from the place where the body of Odette was recovered.[24]

Jovita Paquita, 47, married and resident of Mahawanhawan, testified that she saw appellant at Chavez' house at past 8:00 a.m. that, morning. She and appellant walked together to Sierra Bros. There, they parted ways.[25]

Appellant testified that on that day, after taking breakfast at about 6:30 a.m., he went to his mother's house (which is near the feeder road and about 50 meters from his own house[26]), where he stayed for about 15 minutes, then left by about 7:00 a.m. to see Kagawad Jaime Chavez.[27] Chavez' house is approximately 330 meters from appellant's house.[28] After about five minutes, he went to the Mahawanhawan Elementary School to buy cigarettes. Unable to buy any there, he returned to Chavez' place and thereafter went to Sierra Bros at 8:00 a.m. He bought cigarettes at Sierra Bros, then returned to his house, arriving there at around 9:30 a.m.[29] Later, he made copra at his parent's land, then spent the rest of the day at his house, which is only 500 meters from the grassy place where the body of the victim was found.[30]

The Issues

The appellant charges that the trial court erred:

- "1. In failing to give due credence to the accused's defenses;
2. In giving undue credence to the testimonies of the prosecution's witnesses;
3. x x x (In convicting) the accused despite the failure of the prosecution to prove the guilt of the accused beyond reasonable doubt;
4. In convicting the accused of x x x Rape with Homicide although the prosecution have (sic) only proven a case for Homicide;
5. In not considering that based on the evidences (sic) presented (by) both the prosecution and the defense, it is Danilo De Austria and not the accused, who is probably guilty of the offense charged."[31]

all of which may be summed up as questioning the trial court's assessment of the credibility of witnesses and its appreciation of the weight and sufficiency of the prosecution's evidence, vis-a-vis that of the defense.

The Solicitor General adds that the trial court erred when it equated life imprisonment with reclusion perpetua in the dispositive portion of the decision.

The Court's Ruling

First Issue: Credibility of Appellant's Defense

We cannot agree with appellant's contention to the effect that the defense built a more credible case than the prosecution, and that its story is consistent with ordinary human experience. In essence, the defense's theory is that, although appellant was in Mahawanhawan, he could not have been at the scene of the crime that fatal morning, and that someone else (De Austria) was present thereat.

As pointed out by the Solicitor General,[32] appellant's alibi itself showed that he was at or very near the place where witness De Austria said he saw him at the time of the commission of the felony. By appellant's own admission, he was in the same barangay on the date and time when the crime occurred. The places where

appellant claimed to have gone that morning are, as found by the trial court, "within walking, distance" of each other. Thus, the court a quo held "x x x that despite (the) variance in testimony as to time and others, it is not physically impossible for accused to be at the scene of the crime. x x x." Therefore, his alibi is inherently weak and hardly credible.

In jurisprudence, alibi is generally considered a weak defense because of the facility with which it can be fabricated.[33] Thus, courts have always looked upon it with suspicion and have received it with caution. It is a well-settled rule that in order for alibi to prevail, the defense must establish by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that the accused was somewhere else.[34]

To cite only one example, this court, in *People vs. Cruz*,[35] computed distances to show that, contrary to the allegation of the accused, it was not physically impossible for him to be at the scene of the crime:

"x x x In the case at bar, the distance between his father's farm and the resthouse on the other hand, and the distance between the said boundary and the resthouse, on the other, which are 2 and 1/2 kilometers, respectively, are not such distances as were physically impossible for accused to negotiate or traverse; in fact, per his own testimony, he was able to travel from his father's farm to the said boundary to play basketball that same day. Besides, the house of accused's parents where he was living was only 200 to 250 meters away from the resthouse, which distance accused could have easily negotiated x x x."

Aside from its inherent weakness, accused-appellant's alibi cannot overcome the positive identification by witness De Austria of appellant as the one strangling the victim that fatal morning.

Second Issue: Credibility of Prosecution Witnesses

Hewing to the general rule in criminal law that the guilt of an accused is not determined by the weakness of defense's case but by the strength of that of the prosecution, appellant also tries to attack the credibility of the prosecution witnesses.

Appellant points to the fact that the witnesses for the prosecution are related to the victim and one another. But then, such purported "defect" cannot be ascribed solely to the witnesses of the prosecution. Among the witnesses of the defense, we find that Mahipos is appellant's "kinakapatid,"[36] while the Chavezes are related to appellant by affinity,[37] and Paquita admitted that appellant is the "godson of (her) in-law." [38]

Relationship can put the testimony of a witness in doubt, but it cannot adversely affect credibility by itself.[39] It is a familiar rule of law that the assessment of witnesses' credibility by the trial court is accorded great respect because it is in the best position to observe and evaluate their demeanor at the time they gave their testimony.[40] As will be shown later, this Court sees no reason to rule otherwise.

Perhaps from sheer desperation, appellant advances an incredible theory: the spouses Sta. Maria, parents of the victim, were trying to cover up their involvement with New People's Army by blaming appellant for the crime. Aside from failing to prove such alleged involvement, accused could not point to any believable reason why the victim's parents would supposedly forego seeking justice for the rape and killing of their daughter merely in order to allay some vague suspicion about their ideological leanings.

On the other hand, it is not also logical to conclude(as accused-appellant would have us do) that Juanson was lying because she, and not her husband, happened to be grazing their carabao that morning when she saw appellant on the feeder road. Likewise, the defense was too obviously clutching at straws when they tried to fault Vasquez, who happens to be a martial arts instructor, for not having accompanied the victim that day on her way to school. He was only a guest of the victim's brother-in-law, not even of the Sta. Marias, and we cannot see how he could have been held responsible in any manner for assuring the safety of the victim.

Further, the defense contends that the testimony of De Austria is inconsistent with logic and human experience. He testified that he saw appellant strangling the victim, but there was no sign of strangulation according to Dr. Abas. Also, he was threatened by appellant with a double-bladed weapon, but no such weapon was presented in court. And instead of reporting the strangling incident to the authorities at once, he opted to untie his carabao first.

The Court finds that these circumstances do not destroy the credibility of De Austria. On direct examination, he testified as follows:

"PROS. VILLAFUERTE

Q

Now, Mr. Witness, do you still recall where were you sometime on January 14, 1991, at about 7:00 o'clock in the morning?

xxx xxx xxx

A:

I was walking towards the ricefield.

Q:

Where?

A:

On the feeder road.

xxx xxx xxx

Q:

While walking on the feeder road of Mahawan-hawan on that particular date and time, do you remember if you have seen anybody on that time while walking?

xxx xxx xxx

A:

Antonio Magana, sir.

Q:

Who else?

A:

And Odette.

xxx xxx xxx

PROS. VILLAFUERTE**Q:**

In what manner did you see this Odette Sta. Maria and this Antonio Magana?

A:

I was behind them.

Q:

Behind whom?

A:

Behind Odette and Antonio Magana.

Q:

And what did you see?

A:

I saw Magana strangling Odette Sta. Maria.

Q.

In what manner did you see Antonio Magana strangling Odette Sta. Maria?

A:

He was ahead of me and I was behind her.

Q:

Do you mean to say that Odette was also walking in the feeder road?

A:

When I saw the two (2) they were no longer walking.

Q:

And you said that Antonio Magana was some sort of strangling Odette Sta. Maria. How was Antonio Magana strangling Odette Sta. Maria?

A:

Using his left arm, sir.

Q:

And that left arm was wrapped around the neck of Odette Sta. Maria?

A:

Yes, sir."[41]

The absence of signs of strangulation does not change in the slightest the fact that the victim was attacked and killed. Even though the weapon used in the killing was not presented in court, still it does not disprove the use of force and violence, as the fatal hack wounds on the cadaver which, according to Dr. Abas,[42] were caused by such a weapon, sufficiently establish this point.

In *People vs. Cortes*, supra, this Court held that delay in reporting a crime does not detract from the veracity of the testimony as long as it is explained. Such delay could be ascribed to fear of reprisal or reticence to get involved. In this case, the reason was clearly fear, as appellant threatened De Austria with harm unless the latter kept quiet. De Austria knew the accused to be abusive (even violent) when drunk. Furthermore, their relative ages also provide basis for De Austria's fear. While the accused is 42 years of age,[43] De Austria is a young man of 19 years.[44] On direct examination, De Austria stated:

"Q:

And what did you do when you saw this thing that you have just said?

A:

I was shocked and I did not do anything.

xxx xxx xxx

Q:

You said that you were shocked because of what you saw, what did you do?

A:

My plan was to untie the carabao and to report the matter afterwards, but he blocked my way.

Q:

What did you do when you were blocked by him?

A:

He poked a double bladed weapon on me.

Q:

Did he say anything to you?

A:

That once the Sta. Marias knew about this thing, he was going to kill me. 'Don't expect to live!'

Q:

How did you receive that message?

A:

When he poked a bladed weapon.

Q:

When those words were uttered to you, what did you feel?

A:

Because I was overfrightened, I said, 'Yes, Yes'.

Q:

Are you afraid of Antonio Magana?

A:

Yes, sir.

Q:

Why?

A:

Because when he gets drunk (sic), he becomes abusive.

Q:

You have personal knowledge on that?

A:

Yes, sir."^[45]

While the reactions of eyewitnesses to a crime may vary, and even if De Austria's reaction may not be typical or expected of a very credible witness, still, the same cannot be considered damaging to his credibility. The trial court accepted his testimony and this Court sees no reason not to.

Third Issue: Case Against De Austria

In a facetious attempt to throw the blame on De Austria and to discredit him, the defense presented witnesses who claimed that they saw De Austria trailing the victim by a few arms' length on the feeder road that morning; one witness added that De Austria had with him a "sinampalok" (bolo) about eighteen inches long.

The Court cannot bring itself to believe such story. While cross-examining De Austria, the defense tried but failed to elicit an admission that he was courting the victim.^[46] Nothing else was presented to show improper motive on his part. Viewed against De Austria's clear and categorical testimony that he saw appellant strangling the victim, the testimonies of the defense witnesses merely ascribe to De Austria a vague and equivocal act which cannot by any stretch of the imagination be made the basis for imputing to him the authorship of the crime.

Fourth Issue: Sufficiency of Circumstantial Evidence

The evidence of the prosecution is undeniably circumstantial in nature. This is true of most rape and rape-cum-homicide cases. The Court, in previous decisions, always took this into consideration.^[47] In many cases, the victim, usually the sole witness, is killed. In *People vs. Masongsong*,^[48] we held that rape is usually done with the least possibility of being seen by the public, as in fact, the presence of eyewitnesses might even

raise serious doubts.

The present case is no different, built as it is upon circumstantial evidence presented through the prosecution witnesses. Dr. Abas testified that the victim died from hack wounds on the neck and that her hymen sustained lacerations, showing the victim was violated and violently killed. He opined that the victim was raped before she was hacked to death. Dr. Abas' approximation of the time of death was corroborated by the testimonies of De Austria, Juanson and Vasquez.[49] Lucia Sta. Maria testified that she found her daughter's body with skirt raised and without underwear. De Austria positively identified appellant as the person strangling the victim that morning. Juanson and Vasquez confirmed that they also saw appellant looking uneasy, walking back and forth as if waiting for somebody by the feeder road that morning .

Juanson on direct examination said:

"Q

On January 14, 1991, do you recall having seen Antonio Magana?

A

Yes, Sir.

Q

What time on January 14, 1991 have you seen Antonio Magana?

A

I could not tell exactly what time but it was in the morning of January 14, 1991.

Q

Can you, more or less, approximate the time?

A

To my estimate, more or less 6:30 in the morning.

Q

Where did you see Antonio Magana on that date and time?

A

He was standing at the feeder road."[50]

"Q

You said you saw Antonio Magana standing on the feeder road while you were grazing your carabao. What did you notice from Antonio Magana, if any?

A

He was uneasy, looking both sides and looking towards the interland (sic) of the barangay."[51]

"Q

Do you know the place where the body of Odette Sta. Maria was recovered?

A

Yes, Sir.

Q

Do you know when she was allegedly raped and killed?

A

Yes, Sir.

Q

What date was that?

A

January 14.

Q

1991?

A

Yes, Sir.

xxx xxx xxx

Q

On the same day that you saw Antonio Magana seemingly waiting for somebody at about 6:30 o'clock in the morning?

ATTY. MAGANA:

Misleading, Your Honor. The witness had not testified that she has seen Antonio Magana waiting for somebody.

FISCAL VILLAFUERTE:

I did not mention any name.

COURT:

Witness may answer.

WITNESS:

A

Yes, Sir.

FISCAL VILLAFUERTE:

Q

That place where you saw Antonio Magana in the early morning of January 14, 1991, do you know how far is it from the very place also where the body of Odette Sta. Maria was found on the night of same day, at more or less 6:30?

WITNESS:

A

I could not give a good estimate but it is only very near where the cadaver was found.

xxx xxx xxx

Q

And in the place where you said Antonio Magana was looking, was he looking in that direction where a resident at the house where Odette Sta. Maria is residing will be coming from?

A

Yes, Sir."[52]

Vasquez on direct examination corroborates. He said:

"Q

Mr. Witness, what time did you return to Labo on January 14, 1991?

A

About 6:10 in the morning.

Q

Did you check your watch?

A

Yes, Sir."[53]

"Q

In that early morning of January 14, do you recall if you have seen Antonio Magana?

A

Yes, Sir.

Q

Where?

A

The place where I saw him on January 14, 1991, Antonio Magana was quite near the place where we recovered the body of Odette Sta. Maria.

xxx xxx xxx

Q

And what did you notice at him when you glanced at him?

A

I don't understand why he is acting uneasy."[54]

Motive was established by Lucia Sta. Maria who testified that her daughter told her one week prior to the incident that appellant would always look at her in a "bad way" whenever they met. On direct examination she said:

"Q

During the death, as a result of the death of Odette Sta. Maria, did you have any suspect as to who could have done this to your daughter?

A

I am suspecting the accused Antonio Magana because one week before she died, we met him.

Q

When you said you met Antonio Magana, what happened then?

A

My daughter held my hand, and she was trembling all over.

Q

What was your reaction when you noticed this to Odette?

A

I asked her why she was behaving like that, she told me that Antonio Magana was staring at her in a bad way.

Q

Did you ask your daughter how she had seen the accused staring at her?

A

That everytime she went to school and back home, and whenever she met Antonio Magana, she informed me that Antonio Magana stared bad at her.

Q

In other words, Odette had that fear over the looks of Antonio Magana?

A

Yes, sir.

Q

And when she told you that, what did you tell her, if any?

A

I did not mind it, sir, I said it might be natural on his part.

Q

This incident happened a week before she died?

A

Yes, Sir."[55]

Taken together, these pieces of circumstantial evidence are sufficient to convict the appellant of the crime charged, (a) there being more than one circumstance; (b) the facts from which the inference is derived having been duly proven; and (c) the combination of all the circumstances being such as to produce a conviction beyond reasonable doubt.[56] Considered as a whole, they constitute an unbroken chain leading to one fair and reasonable conclusion -- that appellant was the author of the crime.

It is doctrinal that the requirement of proof beyond reasonable doubt in criminal law does not mean such a degree

of proof, as excluding the possibility of error, produces absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.[57] This was sufficiently established in the case at bar.

Fifth Issue: Rape Despite Absence of Spermatozoa

The defense harps on the absence of spermatozoa during autopsy as proving that no rape was committed.

The Court disagrees. It has been long settled that absence of spermatozoa does not necessarily mean that rape was not committed; the slightest penetration of the female organ is enough.[58] The lacerations of the victim's hymen sufficiently established that sexual intercourse took place. This is further corroborated by Lucia who saw the cadaver without underwear and with skirt raised.

Again, we find the chain of circumstances unerringly leading to one solitary conclusion: appellant was the perpetrator of this despicable crime.

Life Imprisonment Is Not Reclusion Perpetua

The Solicitor General points out the error of the trial court in equating reclusion perpetua with life imprisonment when it sentenced the accused "to the penalty of DEATH. However, in view of the suspension of the death penalty, accused is hereby sentenced to imprisonment for life (Reclusion perpetua) x x x." [59]

This Court distinguished between the two penalties in its previous decisions. Recently, in *People vs. Lascuna*, [60] the Court noted that such distinction have been made as early as 1948 in *People vs. Mobe*, 81 Phil 167. In *People vs. Baguio*, [61] the Court made the following differentiation:

"The Code (Revised Penal Code) does not prescribe the penalty of life imprisonment for any of the felonies therein defined, that penalty being invariably imposed for serious offenses penalized not by the x x x Code but by special law. Reclusion perpetua entails imprisonment for at least thirty (30) years, after which the convict becomes eligible for pardon. It also carries with it accessory penalties, namely: perpetual special disqualification, etc. It is not the same as life imprisonment which, for one thing, does not carry with it any accessory penalty, and for another, does not appear to have any definite extent or duration."

At the risk of being repetitive, this Court enjoins trial judges to keep the foregoing in mind and apply the correct penalty. We further caution them against lapsing into the same error.

In the instant case, the proper penalty is reclusion perpetua because the imposition of the death penalty under the Revised Penal Code (in Article 335 thereof, as amended by R.A. 2632 and R.A. 4111, when by reason or on the occasion of rape, a homicide is committed), was prohibited by the Constitution at the time the offense was committed. So too, we delete the award of liquidated damages inasmuch as there was no pre-agreement on any such damages.

WHEREFORE, the Court hereby AFFIRMS with modifications the assailed Decision. We uphold the conviction of appellant for the crime of rape with homicide and the order to indemnify the heirs of the deceased in the amount of fifty thousand pesos (P50,000.00) for her death, twenty thousand pesos (P20,000.00) as moral damages and ten thousand pesos (P10,000.00) as exemplary damages. We herewith modify the sentence imposed to reclusion perpetua.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Judge Sancho A. Dames II presiding.

- [2] RTC Decision, p. 10; Rollo, p. 23.
- [3] Rollo, p. 4.
- [4] RTC Decision, pp. 9-10; Rollo, pp. 22-23.
- [5] TSN, May 16, 1991, pp. 4-5.
- [6] Id., p. 9.
- [7] Id., pp. 9-10.
- [8] Id., p. 11.
- [9] TSN, June 18, 1991, pp. 5-7.
- [10] Ibid.
- [11] Id., p. 7.
- [12] Id., pp. 9-11.
- [13] Id., pp. 18-19.
- [14] TSN, July 2, 1991, pp. 11-12.
- [15] TSN, July 22, 1991, pp. 5-7.
- [16] Id., pp. 10-11.
- [17] TSN, July 22, 1991, pp. 29-32; 37-38.
- [18] TSN, July 31, 1991, pp. 12 & 15.
- [19] Id., p. 18.
- [20] Id., p. 16.
- [21] TSN, August 28, 1991, pp. 31-32.
- [22] TSN, August 28, 1991, pp. 50-51.
- [23] Id., pp. 54-56.
- [24] Id., p. 65.
- [25] TSN, August 28, 1991, p. 80.
- [26] TSN, August 28, 1991, pp. 87-89.
- [27] Id., pp. 89-91.
- [28] Id., p. 101.
- [29] Id., p. 103.
- [30] Id., pp. 94-95, 99.
- [31] Appellant's brief, p. 1; Rollo, p. 30.
- [32] Memorandum, p. 16; Rollo, p. 120.

- [33] *People vs. Cortes*, 226 SCRA 91, 100 (September 3, 1993).
- [34] *People vs. Marquez*, 153 SCRA 700 (September 14, 1987); *People vs. Cortez*, *supra*; *People vs. Nescio*, 239 SCRA 493 (December 28, 1994).
- [35] 177 SCRA 451, 466 (September 13, 1989).
- [36] TSN, July 31, 1991, p. 24.
- [37] TSN, August 28, 1991, p. 44.
- [38] *Id.*, p. 82.
- [39] *People vs. Lardizabal*, 204 SCRA 320, 330 (November 29, 1991).
- [40] *People vs. Remollo*, 227 SCRA 375, 381 (October 22, 1993) and *People vs. Dela Cruz*, 229 SCRA 754, 761 (February 8, 1994).
- [41] TSN, June 18, 1991, pp. 17-18.
- [42] TSN, May 16, 1991, p. 10.
- [43] TSN, August 28, 1991, p. 148.
- [44] TSN, June 18, 1991, p. 14.
- [45] TSN, June 8, 1991, p. 18-21.
- [46] TSN, June 18, 1991, p. 28.
- [47] *People vs. Alvarez*, 226 SCRA 683, 690-691 (September 23, 1993).
- [48] 174 SCRA 39, 47 (June 6, 1989).
- [49] The autopsy was performed in January 15, 1991 at about 8:30 A.M. The time of death was placed at between 12 and 24 hours prior to the autopsy, which was about the time appellant was seen waiting by the feeder road.
- [50] TSN, July 22, 1991, pp. 196-197.
- [51] TSN, July 22, 1991, p. 199.
- [52] TSN, July 22, 1991, pp. 201-205.
- [53] TSN, July 22, 1991, p. 219.
- [54] TSN, July 22, 1991, p. 274.
- [55] TSN, July 2, 1991, pp. 48-49.
- [56] Section 5, Rule 133 of the Revised Rules of Court. Cf. *People vs. Flores*, 186 SCRA 303, 314 (June 6, 1990), and *People vs. Alvarez*, *supra*.
- [57] *People vs. Guarnes*, 160 SCRA 522, 532 (April 15, 1988).
- [58] *People vs. Selfaison*, 1 SCRA 235, 242 (January 28, 1961); *People vs. Cruz*, 177 SCRA 451, 464 (September 13, 1989); *People vs. Balane*, 123 SCRA 614, 627 (July 25, 1983); *People vs. Garcia*, 105 SCRA 6, 31-32 (June 11, 1981).
- [59] RTC Decision, Rollo, pp. 22-23.

[60] 225 SCRA 386, 404-403 (August 18, 1993).

[61] 196 SCRA 459, 469 (April 30, 1991).

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