PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME QUISAY Y IGNACIO, ACCUSED-APPELLANT.

G.R. No. 106833. December 10, 1999

Ponente: GONZAGA-REYES, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-106833/

GONZAGA-REYES, J.:

Before us is an appeal from the decision[1] of the Regional Trial Court of Negros Oriental, Dumaguete City, Branch 41, finding accused-appellant Jaime Quisay guilty of rape with homicide and sentencing him to suffer the penalty of reclusion perpetua with the accessories provided by law and to indemnify the heirs of the victim in the amount of P50,000.00 as damages.

The accusatory portion of the Information dated December 12, 1990 states that -

> "that at about 8:00 o'clock in the evening of October 21, 1990, at Barangay Suba, Bayawan, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the victim AINNESS MONTENEGRO, a 2 years and 11 months old baby girl; that on the occasion of the said rape, and taking advantage of superior strength and with intent to kill, treacherously and attack, assault and use personal violence upon victim Ainness Montenegro, thereby inflicting upon her the following physical injuries, thus:
>
> - Hematoma forehead middle part;
>
> - Multiple abrasions forehead;
>
> - Hematoma nose with bloody discharges;
>
> - Hematoma submadibular area, right;
>
> - Multiple abrasions nose and face;
>
> - Hematoma left iliac area;
>
> - Hematoma thigh right upper 3[rd];
>
> - Depressed fracture, right supra-orbital area, 3-4 cm. length;
>
> - Multiple confluent Hematoma Right and Left leg, posterior aspect;
>
> - Multiple confluent hematoma and abrasions, neck both side;
>
> - Contusion, labia minora;
>
> - Hematoma, labia Majora, right aspect;

Which injuries caused the instantaneous death of said Ainness Montenegro."[2]

The accused, when arraigned, pleaded not guilty to the charge. Thereafter trial on the merits ensued.

As synthesized by the Solicitor General in the People's brief, the evidence of the prosecution is as follows:

> "Prosecution presented seven (7) witnesses. First witness presented was Dr. Lydia Villaflores, 45 years of age and a resident physician of Bayawan District Hospital. She testified that she was the one who examined a child by the name of Ainness Montenegro on October 21, 1990 (tsn, June 10, 1991, p. 7). She claimed that in connection with her examination, she issued a medical certificate dated October 29, 1990 (marked as Exhibit "A" for the prosecution) stating the following findings:
>
> - Hematoma forehead middle part;
>
> - Multiple abrasions forehead;
>
> - Hematoma nose with bloody discharges;
>
> - Hematoma submadibular area, right side;
>
> - Multiple abrasions nose and face;
>
> - Hematoma left iliac area;
>
> - Hematoma thigh right upper 3[rd];
>
> - Depressed fracture, right supra-orbital area, (tsn, Ibid, p. 8);
>
> - Multiple confluent Hematoma Right and Left leg, posterior aspect;
>
> - Multiple confluent hematoma and abrasions, neck both side;
>
> - Contusion, labia minora;
>
> - Hematoma, labia majora, right aspect;
>
> She further testified, however, that findings No. 9 up to 12 in the medical certificate were not her findings but that of Doctor's Aurelia and Calo-oy (tsn, Ibid, p. 10). On re-direct, Dr. Villaflores admitted that before she signed the medical certificate with the additional findings, consultation with Drs. Aurelia, Calo-oy and Flores, the latter being the Chief of the Hospital, was conducted and that she agreed on the additional findings (tsn, Ibid, p. 20). She testified that during her examination on the body of the victim, including its genital organ, she did not notice any damage although she admitted that the hematoma may have developed later (tsn, Ibid, p. 28).
>
> Second prosecution witness was Dr. Arnold Calo-oy, Municipal Health Officer of Bayawan, Negros Oriental. Dr. Calo-oy testified that he had been a Municipal Health Officer of Bayawan, Negros Oriental, since April 1987 up to the present time. As Municipal Health Officer, it is one of his duties to conduct post mortem examination. On October 22, 1990, he and two other doctors, Dr. Aurelia, a senior resident physician of Bayawan District Hospital and Dr. Felimon Flores, Chief of the Bayawan District Hospital conducted a post mortem examination on the dead body of Ainness Montenegro at the residence of Alejandro Montenegro, father of the victim (tsn, June 10, 1991, pp. 32-34). In connection with the examination, four (4) additional findings were added to the findings of Dr. Lydia Villaflores. These findings are:
>
> - Multiple confluent hematoma, right and left leg, posterior aspect;
>
> - Multiple confluent hematoma and abrasions, neck both sides;
>
> - Contusion, labia minora;
>
> - Hematoma, labia majora, right aspect, (tsn, Ibid, p. 35).

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Dr. Calo-oy added that these injuries may have been caused by a hard object applied with force (tsn, Ibid, pp. 36-37). He also testified that these injuries may not be found prominently right after the application of the force because hematomas or any defect of this nature develop slowly and thus, may not immediately be seen after the cause of the hematoma (tsn, Ibid, p. 37). On cross-examination, Dr. Calo-oy admitted that there was already a post mortem examination on the body of the victim conducted by Dr. Lydia Villaflores but since the father of the victim requested for another examination, he, together with Dr. Aurelia and Dr. Flores conducted another one (tsn, Ibid, p. 41). Witness Dr. Calo-oy testified that the second examination was done in the residence of the victim and that upon observing the additional findings, they conferred with Dr. Villaflores and they (all four doctors) signed the medical certificate (tsn, Ibid, p. 53). Dr. Calo-oy added that with the injuries sustained by the victim, it was a possibility that there was sexual assault (tsn, ibid, p. 56). He added that even if the second examination occurred after twenty hours from the initial examination, no amount of tampering of the cadaver could have resulted any hematoma since any blow on any part of the body when such body is already dead is not possible inasmuch as there is no more blood circulation (tsn, Ibid, p. 58). He further added that the hematoma that developed were those acquired at the time the victim was still alive and may have developed at the time of the first examination but cannot be seen by naked eye and became prominent only during the time the second examination was conducted (tsn, ibid, pp. 58-59).

Third prosecution witness Alejandro B. Montenegro, [Jr.] testified that he is the father of the victim, Ainness Montenegro. He claimed to have known accused-appellant Jaime Quisay because the latter lived in his mother-in-law's house for the past seven months. The house of his mother-in-law is just adjacent to his house (tsn, June 18, 1991, p. 3). When witness Montenegro was asked whether he knows the accused-appellant, he answered in the affirmative and pointed to a man in the courtroom who answered to the name of Jaime Quisay. Witness Montenegro further testified that at past 7:00 in the evening of October 21, 1990, right after having his supper, he went to look for his daughter, Ainness. His daughter was "borrowed" by accused-appellant Quisay from his wife allegedly to bring the little girl out to the store to buy candies (tsn, Ibid, pp. 4-5). When accused-appellant Quisay and his daughter Ainness did not come back. Witness Montenegro went looking for them. Having failed in his search, witness decided to go home and on his way, he saw a police car coming (tsn, ibid, p. 5). Together with the police, they searched the place and a neighbor by the name of Mrs. Ong told the search party to check the area of Mr. Maypa as she heard something from that area, thus, the search party focused their search thereon (tsn, Ibid, p. 6).

The search party found Ainness Montenegro in a dark area of Maypa compound lying flat on her back on the ground (tsn, Ibid, p. 6). Ainness clothes were pulled up to cover her face. Upon seeing his daughter, witness Montenegro went to his daughter and discovered that the child was already dead (tsn, Ibid, p. 7).

On cross-examination, witness Montenegro claimed that he went back to the site of the crime after the incident and found a piece of slipper of a child, a pair of slippers of accused-appellant Jaime Quisay and a brief (tsn, Ibid, p. 11). When asked why these facts were never stated in his affidavit executed on November 5, 1990, witness Montenegro claimed that the items found at the site of the crime were turned over to the police for safekeeping (tsn, Ibid, p. 17).

Fourth prosecution witness Leo Magbanua testified that he knows accused-appellant Jaime Quisay since 1990 because they were neighbors (tsn, June 18, 1991, p. 25). When asked to identify accused at the courtroom, he pointed to a man who answered by the name of Jaime Quisay. On October 21, 1990, at around 8:00 in the evening while witness was at home having arrived from a friend's house watching betamax movie, he heard a baby crying from outside their house (tsn, Ibid, p. 27). He peeped through the window and saw a person carrying a crying child going to the Maypa compound (tsn, Ibid, p. 38). Upon seeing what he saw, witness Magbanua called his grandfather who wanted to go out and check but was stopped by his (witness) grandmother for fear that the man carrying the child might be armed (tsn, Ibid, pp. 28-29). Witness Magbanua further testified that he heard somewhat like a pounding sound coming from the place where the child was crying and that he heard a very loud cry as if in pain (tsn, Ibid, pp. 30-31). After the pounding sound, witness

Magbanua saw the accused-appellant go toward the dancing place with a child (tsn, Ibid, p. 31). Having witnessed all these, witness Magbanua and his grandfather asked help from a neighbor, Mrs. Mary Joy Ong, who has a telephone and who immediately called the police (tsn, Ibid, p. 33). A partrol car came and, thus, searched for Ainness Montenegro (tsn, Ibid, p. 34). The next thing witness saw was the dead body of the child, Ainness Montenegro, when found at the Maypa compound by the police (tsn, Ibid, p. 35).

Fifth prosecution witness was Dr. Filemon B. Flores, Chief of Hospital II, Bayawan District Hospital, Bayawan, Negros Oriental. Dr. Flores testified that on October 22, 1990, he reported for work at the hospital and learned about the death of one of the daughters of one of the hospital nurses, Mr. Alejandro Montenegro. He, together with two (2) other doctors, Dr. Calo-oy and Dr. Aurelio, went to the house of the nurse to pay their respect. Upon arrival at the house of the nurse, the father of the victim requested that the three doctors take a look at the dead child. Out of curiosity, they gave into the request and was able to find four more injuries on the body of the victim not found by Dr. Lydia Villaflores, the doctor who examined the dead child when brought to the hospital on the night of October 21, 1990. With the additional findings witness Flores instructed the two doctors, Dr. Calo-oy and Dr. Aurelia to coordinate with Dr. Lydia Villaflores as regards the new findings (tsn, July 2, 1991, p. 4). He further testified that injury No. 11 which is contusion, labia minora, could have been caused by any object applied with pressure on the area, while injury No. 12 which is hematoma, labia majora, right aspect, could have been caused by blunt object that was presented on the area too. When asked whether such injuries could have been caused by sexual abuse, witness Dr. Felimon Flores answered "possible" (tsn, Ibid, p. 7).

Sixth prosecution witness Raymundo Cebumit testified that he knew accused-appellant as they are neighbors (tsn, July 3, 1991, p. 3). When asked to identify the accused, witness Cebumit pointed to a man in court who answered to the name of Jaime Quisay, in the evening of October 21, 1990, while he was attending to his pig at its pig pen, a patrol car arrived. Curious as to what was happening, he inquired from the policemen what was wrong and was informed that they were searching for a missing child. Upon hearing the news, he joined in the search and was one of those who found the child by the palm and acacia trees (tsn, Ibid, p. 5). He further testified that at the time he saw the child/victim, her dress was raised up to her face and that she was no longer breathing (tsn, Ibid, p. 7).

Last prosecution witness Pablo Tagacan testified that he knows accused-appellant Jaime Quisay because their houses are just near each other. When asked to identify accused-appellant in court, witness pointed to a person sitting on the accused bench who answered the name of Jaime Quisay. According to witness Tagacan, on the evening of October 21, 1990, he was in his house when Jaime Quisay passed by carrying a child (tsn, August 7, 1991, pp. 5-6). Witness claimed that he recognized the child as the daughter of Mrs. Montenegro. According to witness Tagacan, he saw accused-appellant carrying the child going towards the inside place of Moring Maypa. When inside the area, accused-appellant sat near the banana plants, perhaps trying to hide and checking whether people were watching him.

While accused-appellant was sitting near the banana plant, the baby was crying (tsn, Ibid, pp. 6-7). Witness claimed that he did not try to go near the accused-appellant for fear that he might be armed. A neighbor, however, telephoned the police, when the police came and found the baby, the child was already dead (tsn, Ibid, p. 8). Witness Tagacan further testified that he saw accused-appellant leave the place where the baby was found prior to the discovery of the body of the victim. Witness saw accused-appellant walk towards the house of the Montenegro. An hour after, the body of the child was discovered (tsn, ibid., p. 10)."[3]

On the other hand, accused-appellant interposed the defense of denial and claims that the death of Ainness was accidental. His version is as follows:

"On October 21, 1990, more or less six months after he first entered Toledo's abode, at around 7:00 o'clock in the evening, accused-appellant came home from watching a movie and saw little Ainness crying. Ardiocena Montenegro, mother of Ainness, gave accused-appellant a peso and ordered him to bring Ainness to the store

to buy some candies for the child. Accused-appellant carried the little girl. (Ibid., pp. 8-10)

On their way to the store, around 35 meters away from Toledo's residence, Ainness requested accused-appellant to let her down. After her feet landed on the ground, Ainness walked away. Accused-appellant cautioned her not to run. However, she turned her direction to the left which caused her to stumble in a 2 meter deep reef-wrap (sic) canal. (Ibid., pp. 10, 11, 16, 17) Accused-appellant instinctively jumped into the canal to help the child. He heard the child cried while in his hands but a moment later, the child stopped crying and the head hang limply towards the right side of her body. (Ibid., p. 18) Accused-appellant lifted the child to the shoulder of the road. After touching the child's chest, accused-appellant realized that she was already dead. Fear engulfed accused-appellant. He ran towards the Toledo residence, leaving the dead body of Ainness at the shoulder of the road, to inform the family of the incident. Upon reaching home, he was asked by Pedro Toledo where the child was. Much to his desire to inform Pedro Toledo of the unfortunate incident, accused-appellant suddenly became speechless. Sensing something wrong happened to his granddaughter, Pedro Toledo boxed accused-appellant's mouth. Accused-appellant went towards the door (Ibid., p. 20) with the intention to report the accident to the authorities inasmuch as Pedro Toledo was not inclined to listen to his story. However, he saw a police patrol car approaching the gate. While waiting for the authorities, somebody struck him on his nape which caused him to lose consciousness. He regained consciousness inside the jail. (Ibid., pp. 20-21)"[4]

To corroborate accused-appellant's defense, Crisanto Panaligan testified[5] that he knew the accused-appellant because the latter worked with his brother in the Catholic Church of Bayawan, Negros Oriental. On October 21, 1990 at about 7:00 o'clock in the evening while he was at the fisheries waiting for a fishing boat to leave he noticed a man in blue short pants carrying a child heading towards a store at the fisheries in San Miguel. When the child ran, she fell into the canal. The man who carried the child went down into the canal, lifted the child on the side of the road and then got out of the canal and ran away. Upon seeing this he (Panaligan) cried out saying "The child fell" and the people of the neighborhood came out of their houses. After a while he saw Jaime Quisay with a bleeding mouth inside the patrol car.

On cross-examination,[6] he declared that it was only after accused-appellant was caught by policemen that he came to know that the man he saw carrying the child on October 21, 1990 was Jaime Quisay.

The trial court rejected the version of the defense that the death of Ainness was due to an unforeseeable accident. It found accused-appellant Jaime Quisay guilty beyond reasonable doubt of the crime of rape with homicide and sentenced him in this wise:

"WHEREFORE, finding the accused guilty of the crime of Rape With Homicide, as charged and proved beyond the shadow of reasonable doubt, there being no mitigating circumstance attending the commission thereof, he is hereby sentenced to suffer the penalty of reclusion perpetua with the accessories of the law and to indemnify the complainant and the victim's family of the jurisprudential amount of FIFTY THOUSAND (P50,000.00) Pesos, as damages thereof.

IT IS SO ORDERED"[7]

The accused-appellant has appealed to this Court submitting in his Appellant's Brief the following assignment of errors:

I
THE LOWER COURT ERRED IN NOT FINDING THAT THE DEATH OF THE VICTIM AINNESS MONTENEGRO WAS DUE TO ACCIDENT.

II
THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT JAIME QUISAY OF THE

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> CRIME OF RAPE WITH HOMICIDE BASED ON MERE POSSIBILITIES AND SUSPICION; AND INCONSISTENT TESTIMONY OF PROSECUTION WITNESSES.
>
> III
> THE LOWER COURT ERRED IN PRESUMING THE GUILT OF ACCUSED-APPELLANT BASED ON HIS IMMEDIATE REACTION AFTER THE DEATH OF THE VICTIM.

The appeal is unmeritorious.

After a painstaking scrutiny of the records of this case we are convinced that the trial court correctly held that the guilt of herein accused-appellant has been proved beyond reasonable doubt.

At the outset, accused-appellant questions as irregular the conduct of the second post-mortem examination made twenty (20) hours after the death of the child-victim. He argues that the findings under the second examination were merely fabrications intended to conform to the theory of the prosecution that the injuries found on the body of the victim were intentionally inflicted by him.

True, the body of the victim was subjected to two (2) post-mortem examinations. The first one conducted immediately after the incident by Dr. Lydia Villaflores indicated that there was no evidence of contusions or hematoma on the genital of the victim. The second one conducted by three (3) physicians, namely: Drs. Arnold Calo-oy, Aurelia and Filemon Flores, 20 hours after the body of the victim was pronounced dead, showed four (4) additional injuries sustained by the victim, viz:

> "1. Multiple confluent hematoma right and left leg;
> 2. Multiple confluent hematoma and abrasions, neck both side;
> 3. Contusion, labia minora;
> 4. Hematoma, labia majora, right aspect."[8]

However, the results of these two medical examinations hardly suggest any conflict or inconsistency that would constrain us not to give probative weight to the second post-mortem examination.

The second examination, while unusual, is not prohibited. As correctly reasoned by the Solicitor General in the People's Brief, viz:

> "It may not be procedurally correct to re-examine the body of the victim after the examination conducted by Dr. Lydia Villaflores, but it is not prohibited or illegal. The family of the victim/child requested for a second examination and they have the right to do so. Nothing was illegally done, more so that even the chief of the hospital [Dr. Filemon Flores] gave consent to the re-examination of the cadaver."[9]

Moreover, the differences in the findings were duly explained. Dr. Lydia Villaflores, the physician who conducted the first post-mortem examination, testified that she was not able to see the aforesaid four additional findings because the cadaver of the victim was brought to her immediately after it was found and while it was still soft. The hematoma then may not have developed or appeared immediately.[10] Dr. Calo-oy further explained that after the body of the victim was pronounced dead during the first post-mortem examination no amount of tampering could cause these hematomas or contusions because the circulation of the blood had already ceased.[11]

The medical qualifications of all the physicians who examined the cadaver of the victim particularly those of Dr. Arnold Calo-oy, Dr. Lydia Villaflores and Dr. Filemon Flores who were the ones presented by the prosecution as their expert witnesses, were not assailed by the defense. Although the defense claimed there were inconsistencies in the testimony of the prosecution witnesses no specific or particular contradictory evidence was pinpointed that would make their findings unworthy of credence.

Anent the proximate cause of death of the victim Ainness Montenegro, Dr. Lydia Villaflores and Dr. Arnold Calo-oy categorically testified that the proximate cause of death of the victim is intracranial hemorrhage or a bleeding inside the brain secondary to a depressed fracture on the scalp of the victim.[12] They are also one in saying that the intracranial hemorrhage could be inflicted on the victim's head only if the scalp was hit by a hard object or if during the fall, the victim's head hit a hard surface. Dr. Calo-oy further clarified that if the victim landed on a smooth surface the depressed fracture on the head of the victim would not be possible without a stronger force to inflict it;[13] "may be a stone or a hard object, a wood or anything because this is a bone."[14] This Court notes that no less than the accused-appellant himself during his testimony conceded that the bottom surface of the canal was mostly covered with mud about 8 inches thick and water about 2 inches deep.[15] Accordingly, it is not probable that an "accidental" fall of the victim into the 2-meter deep canal would cause a fracture on the bone of the victim's head even if the latter's head hit the bottom surface of the canal.

The theory of accused-appellant that the various injuries sustained by the victim were inflicted when the victim's head and other parts of her body hit the stones on the wall of the canal is not supported by evidence. We find no cogent justification to set aside or disturb the findings of the trial court that the location of these physical injuries negates his contention; thus,

> "Now, if by the accused's own testimony, that the place, where the deceased fell into, is covered by an eight (8) inch mud, then, the impact of the fall would not be enough to create a fracture on the skull, as to cause internal hemorrhage. The rip-rap of the stones were only on the side walls of the canal. And to think that the canal is wide enough to negate contact with rip-rap side walls of the said canal.
>
> Next, one glaring fact which the defense cannot credibly explain is --- if the child-victim did die from that alleged single fall into the canal --- then, why is it that there were several injuries suffered or inflicted on the said victim? Why? Corollary thereto, if the alleged fatal injury --- the "intercranial (sic) hemorrhage" --- was suffered on that alleged single fatal fall --- then, why were injuries found and detected on the labia menora and labia majora? Why?
>
> Also, why was the hematoma found on the "right upper third" of the thigh and, in the opposite area, on the "left iliac area" another hematoma also appeared?
>
> Likewise, why were other injuries found on both the right and left legs and, consistently thereto, why were "confluent hematoma and abrasions" found on both sides of the "neck"? Why were these perplexing physical medico-legal injuries found in other inconceivable parts of the victim's body?
>
> Now, if the proximate cause is "intercranial (sic) hemorrhage", which could have caused instantaneous death, then, the existence of the other injuries, found on the victim's body, would become superfluous and clearly irrelevant.
>
> In a nutshell, the only plausible conclusion is that there was a violent struggle --- to rape the child-victim and followed by that heard shrilly cry of pain --- before a strong blow on the head was fatally inflicted thereon by the accused.
>
> And to think that this legal conclusion or presumption was never overturned by the defense itself. In fact, they have never traversed the same. Thus, the legal conclusion cannot be avoided herein --- that the accused had committed the charge of rape with homicide."[16]

Accused-appellant invokes in his defense the exempting provision of paragraph 4 of Article 12 of the Revised Penal Code. He argues that when the victim fell into the 2-meter deep canal, her head and other parts of the body hit the stones at the wall of the canal and this explains the various injuries of the victim that led to her death. Thus, the victim's death was due to an unforeseeable accident and was without his intervention.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

The exempting circumstance cannot be invoked. Paragraph 4 of Article 12 of the Revised Penal Code pertinently provides:

> "Article 12. Circumstances which exempt from criminal liability. The following are exempt from criminal liability:
> 1. x x x
> 2. x x x
> 3. x x x
> 4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.
> 5. x x x.
> 6. x x x."

Accused-appellant's theory is that he was taking care of the victim when the victim ran away and fell into the canal. The issue is whether his version is credible compared to that of the prosecution. We find that the trial court correctly rejected the contention of the accused-appellant.

The fundamental rule is that when the issue is one of credibility of witnesses, the trial court's determination on the credibility of witnesses is entitled to great respect.[17] The trial judge is best situated to assess and evaluate the probity and trustworthiness of witnesses, for he is able to observe directly their behavior and manner of testifying, and is thus in a much better situation to determine whether they are telling the truth or prevaricating.[18] An exception is when the trial court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[19] Since no arbitrariness or any cogent reasons were cited that would call the reversal of the lower court's evaluation of credibility of witnesses, the testimony of the witnesses for the prosecution are accorded full faith and credence by this Court.

The physical evidence failed to support the version of accused-appellant that the victim Ainness Montenegro fell accidentally into the canal. The location and nature of the physical injuries found on the victim, numbering 12, were concentrated on specified parts of the anterior region of the body i.e. on her head, on both sides of her neck, and on her female organ. This supports the conclusion of the trial court that they were inflicted to repel any resistance that the child-victim may offer the accused-appellant. The injuries found on the victim's sex organ and on both sides of her neck could not have been solely due to a single accidental fall into the canal. No bruises or injuries were found on other parts of the body of the victim i.e. in the hands, arms, knees, or at the back of the body of the victim, that would be consistent with the accused-appellant's version of accident. Accused-appellant's denial is unsubstantiated by clear and convincing evidence and is self-serving and thus deserves no weight in law.[20] Where the evidence of the prosecution convincingly connects the crime and the culprit the probative value of denial is negligible.[21]

Accused-appellant also claims that contrary to the statements made by prosecution witnesses Leo Magbanua and Pablo Tagacan his shirt was dominantly colored red, not white. These two prosecution witnesses had testified that the person they saw from a distance and during nighttime carrying a child towards the place where the body of the victim was found wore a white shirt; thus error in identification was not a remote possibility. Accused-appellant relies on the testimony of Alejandro Montenegro, Jr., another witness for the prosecution, who testified that when accused-appellant went back to their house to change his pants accused-appellant wore a red-striped shirt. Thus, accused-appellant asserts that it is very hard to believe that he was the person seen by the other prosecution witnesses carrying the victim to the Maypa compound.

The identification made by these witnesses, however, was not mainly based on the clothing of the person whom they saw carrying the child victim. Both Leo Magabanua and Pablo Tagacan categorically testified that the person

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

they saw carrying the child was accused-appellant whom they personally knew. Leo Magbanua and Pablo Tagacan both declared in court that they knew accused-appellant because the latter was their neighbor.[22] Leo Magbanua went on to explain that his positive identification of the accused-appellant who was carrying the victim Ainness was also brought about by the flourescent light attached to a post along the side of the road.[23] Pablo Tagacan, for his part, declared that when he saw the accused-appellant with the crying child-victim going towards the Maypa compound he saw the accused-appellant sitting near the banana plants apparently observing whether other people had noticed them.[24] Both of these witnesses who testified on affirmative matters had no improper motive whatsoever to falsely impute to the accused-appellant such a grave offense. It is an accepted principle that testimonies of witnesses who have no motive or reason to falsify or perjure their testimonies should be given credence. The testimony of Alejandro Montenegro, Jr., the father of the victim, that accused-appellant wore a red-striped shirt when the latter went back to their house to change his pants refers to a minor detail and does not suffice to make the identification of the two witnesses less credible. What remains is the uncontroverted fact that accused-appellant was the one seen carrying the crying child towards the Maypa compound; that he was also the person seen sitting with the victim inside the compound where the body of the latter was found; that he went back alone, barefooted, to the house of the victim's grandparents to change his wet pants; that the muddied body of the victim was subsequently found in the said compound; and that the following day the brief and the slippers of the accused-appellant were recovered from the crime scene.

Accused-appellant maintains his innocence on the basis of the fact that immediately after the death of Ainness, he went back to the house of the victim's grandparents, a reaction alleged inconsistent with guilt. This contention is not tenable. There is no established doctrine to the effect that, in every instance, non-flight is an indication of innocence.[25] Non-flight is not always an indication of innocence.[26] We are inclined to affirm the observation of the trial court that his conduct reflected "the silence of guilt";

> "x x x, if the child did really die from the alleged fall --- accidentally, then, the dictates of a clear conscience would have instinctively urged him to carry the child, with loving and tender care, to her parents. But the knowing finger of guilt made him realize that gnawing feeling of deep guilt; hence, not knowing what to do, left the child lying lifeless where she was.
>
> Thus, when confronted by the grandparents, as to where the child is --- he stood tongue --- tied and speechless, with not a single word coming out from the accused's lips. It was the silence of guilt. So accused said:
>
> Q. So, you were not able to tell them what really happened to Ainness Montenegro, is that right?
>
> A. I was not able to tell them. That's true.
>
> (TSN., p. 196; Stress ours)."[27]

Accused-appellant further contends that even assuming without conceding that hematomas and contusion were found on the labia of the child-victim, the same were caused not by sexual abuse but by the hard stones in the canal. He claims that the penis of a matured person inserted into the genital of a two-year old child will not only cause hematoma and contusion but will definitely result to an apparent perineal laceration due to the disparity in size. Not even the physicians who examined the deceased could ascertain that the victim was ravished. Thus, he claims that their opinion that the child was raped is a mere possibility that cannot be considered evidence.

Accused-appellant's contention is untenable. Based on the medical testimony of Dr. Calo-oy, if the injuries found on the female genital were caused by a rubbing of her private part on any hard object (i.e. the stones on the walls of the canal) there might only be an abrasion and not a hematoma. For hematomas are brought about by an impact

caused by a force or a hard object. It is a blood clot. It forms a bluish discoloration because of the blood clot underneath the skin.[28] The injuries found on the genital of the victim were not just bruises but were hematomas on both the labia menora and the labia majora that repudiate accused-appellant's claim of accident. Dr. Flores also testified that the injuries in the labia majora and the labia menora could not be caused without opening the legs of the child-victim.[29]

While it may be true that the medical certificate or testimonies of the physicians who have examined the victim may not alone suffice to prove that the victim was raped,[30] such evidence may be offered to corroborate the testimony of other prosecution witnesses to prove the fact of rape. The sexual assault in this case was proven not merely by the medical testimony of the prosecution's expert witnesses but on other convincing pieces of evidence.

The record shows that when the body of Ainness Montenegro was found at the Maypa compound she was lying flat on her back, already dead, with her dress raised up to cover her face. The victim's head was wet and muddy, and some parts of her body were muddied.[31] The day after, the brief and the slippers of the accused-appellant were found at the crime scene. As the trial court observed, the accused-appellant after realizing "that gnawing feeling of deep guilt; hence, not knowing what to do, left the child lying lifeless where she was."

An examination of the nature and location of the injuries sustained by the victim, as reflected in the two post-mortem examinations, corroborates the fact that these injuries could not have been inflicted without the accused-appellant having placed himself in control of his victim. With respect to the injuries on the genital of the victim, the same could not have been inflicted unless her legs were spread to enable the accused-appellant to pursue his evil design. The fact that no perineal laceration was found on the genital of the victim does not dispel a finding of rape. Complete penetration of the female genitalia is not essential. The important consideration in rape cases is the penetration of the pudenda.[32] The slightest degree of penetration of the pudenda by a male sex organ suffices to consummate the crime of rape.[33] Jurisprudence is well-settled to the effect that for rape to be consummated, rupture of the hymen is not necessary, nor is it necessary that the vagina sustain a laceration, especially when the victim is a young girl.[34]

Considering the relative physical position of an accused in inflicting injuries upon a victim of rape and the victim, the usual location of the external bodily injuries of the victim is on the face, neck, and anterior portion of the body,[35] as in this case. These physical pieces of evidence, though mute, constitute an eloquent manifestation of truth and rates high in our hierarchy of trustworthy evidence.[36] What is more, the other surrounding circumstances and physical evidence extant in the records of this case as gleaned from the testimonies of other witnesses for the prosecution, convincingly indicate the perpetration of rape and the commission of homicide.

In a plethora of cases, we have held that the crime of rape is difficult to prove because it is generally unwitnessed and very often only the victim is left to testify for herself. It becomes even more difficult to prove when the complex crime of rape with homicide is committed because the victim could no longer testify. Thus, in crimes of rape with homicide, even though the crime of rape must be proven as convincingly as the crime of homicide, resort to circumstantial evidence is unavoidable, as in this case.[37]

Circumstantial evidence, under the Rules of Court, is sufficient to sustain a conviction if: (a) there is more than one circumstance; (b) the facts from which inferences are derived are proven; and, (c) the combination of all circumstances is such as to produce conviction beyond reasonable doubt.[38] Facts and circumstances consistent with guilt and inconsistent with innocence constitute evidence that, in weight and probative force, may surpass even direct evidence in its effect upon the court.[39] Here, the circumstantial evidence pointed out by the trial court is sufficient to support the finding that accused-appellant raped and killed the victim, to wit:

> The defense of the accused, x x x, is mainly denial and alibi, which is the weakest of all defenses. It is very

> easy to concoct and to fabricate. Besides, there was no physical impossibility for the accused to be somewhere else at the time of the occurrence of the incident. In fact, the accused was seen in the immediate vicinity of the scene of the crime. Not only that, he was in the custody and care of the child-victim minutes before the happening thereof. He was positively identified carrying the child-victim in his arms. He was pinpointed carrying the same child towards the very place where the child-victim was later discovered dead already. He was definitely identified coming out of the scene of the fatal incident moments after entering the said place. When he entered into the place of the incident, with the crying child-victim, he was positively identified wearing a white T-shirt and with short blue denim pants. When he came out of the place of the incident, alone and without now the child-victim with him, he was, likewise, positively identified, by the light of the NORECO street-light lamp, also with the same clothing on his body.[40]"

In People v. Develles,[41] a conviction for rape with homicide was upheld where the accused was positively identified to be the last person seen with the victim on or about the time she was killed at the place where the latter was found dead. The appellant therein being a family friend, the victim had no reason to be afraid of him and had no premonition of evil when she went with him, as in this case.

With respect to the testimony of Crisanto Panaligan, the corroborating witness for the defense, the trustworthiness of his testimony which tried to fill the needed details to support the theory of the defense leaves much to be desired. He failed to report what he had witnessed to the proper authorities when an opportune time appeared, first, when he came back from his fishing interlude, a day after witnessing the incident, to the place of the incident, and second when he visited the accused-appellant at the Bayawan Municipal Jail. His declaration in court that after the incident happened he shouted that "the child fell"; that he went near the place of the canal together with other people who heard his shout; that he saw a man and a woman take the child-victim; that he never told anybody at that time about what he saw, not even his companion at the fishing boat, Marvin Atiledo,[42] does not inspire belief. Human experience would naturally motivate one to instantaneously relate what happened to the other people who responded to the commotion, or at least relate the same to his fishing companions. All he (Panaligan) did was to go near the canal and he kept unexplainably silent about what he had witnessed. Jurisprudence is settled that whatever is repugnant to the standards of human knowledge, observation and experience becomes incredible and lies outside judicial cognizance.[43]

The crime subject matter of the instant appeal was committed on October 21, 1990, prior to the effectivity of the death penalty law, Republic Act No. 7659, in cases of heinous crimes. Said law which took effect on December 31, 1993, and which reimposes the death penalty, does not apply to crimes committed prior to its effectivity.[44] Hence, the penalty for the complex crime of rape with homicide should only be reclusion perpetua.

The trial court awarded the heirs of the victim civil indemnity of P50,000.00. This should be increased to P100,000.00 in accordance with the ruling in People v. Payot[45]and People v. Robles,[46] in which it was stated:

> "With regard to the civil indemnity, the court hereby rules that the victim of rape with homicide should be awarded the amount of P100,000.00. Prevailing judicial policy has authorized the mandatory award of P50,000.00 in case of death, and P50,000.00 upon the finding of the fact of rape. Also, under recent case law the indemnity for the victim shall be in the increased amount of P75,000.00 if the crime of rape committed is effectively qualified by any of the circumstances under which the death penalty is authorized by the applicable amendatory laws [R.R. No. 4111 and R.A. No. 7659]; Thus, if homicide is committed by reason or on occasion of the rape, indemnity in the amount of P100,000.00 is fully justified and properly commensurate with the seriousness of the said special complex crime."

An award of P50,000.00 for moral damages should likewise be made in favor of the heirs of the victim in accordance with recent ruling of this Court.[47]

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

WHEREFORE, the decision of the Regional Trial Court of Negros Oriental, Dumaguete City, Branch 41 is AFFIRMED with the MODIFICATION that the award of civil indemnity is increased to P100,000.00 and, the heirs of the victim are also awarded P50,000.00 as moral damages.

SO ORDERED

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

---

[1] Record, pp. 158-185.

[2] Record, pp. 158-159.

[3] Appellee's Brief, pp. 4-16; Rollo, pp. 113-125.

[4] Appellant's Brief, 4-5; Rollo, pp. 63-64.

[5] Tsn, December 4, 1991, pp. 3-7.

[6] Ibid., pp. 11-13.

[7] Decision, p. 28; Record, p. 185.

[8] Ibid., p. 35.

[9] Appellee's Brief, p. 23; Rollo p. 132.

[10] Tsn., June 10, 1991, pp. 10, 20 &21.

[11] Ibid., pp. 57-60.

[12] Tsn., June 10, 1991, pp. 15 & 38.

[13] Ibid., p. 51.

[14] Ibid., p. 38.

[15] Tsn., September 4, 1991, pp. 18-19.

[16] Decision pp. 19-21; Record pp.176-178.

[17] People v. Estares, 282 SCRA 524.

[18] People v. Peralta, 283 SCRA 81.

[19] People v. Dizon, G.R. No. 128889, August 20, 1999.

[20] People v. Parazao, 272 SCRA 512.

[21] People v. Fabro, 277 SCRA 19.

[22] Tsn., June 18, 1991, p. 25 & Tsn., August 7, 1991, p. 5, respectively.

[23] Tsn., June 18, 1991, pp. 31-32 & 43-44.

[24] Tsn., August 7, 1991, pp. 6-7.

[25] Agoncillo v. CA, 292 SCRA 313.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

[26] People v. Bajar, 281 SCRA 262; People v. Timon, 281 SCRA 577; People v. Quijada, 259 SCRA 191.

[27] Decision p. 21; Record, p. 178.

[28] Tsn., June 10, 1991, pp. 37 & 45-46.

[29] Tsn., July 2, 1991, p. 7.

[30] People v. Domantay, G.R. No. 130612, May 1, 1999 citing People v. Umali, 225 SCRA 594.

[31] Tsn., June 18, 1991, pp. 40-41.

[32] People v. Mohado, 227 SCRA 94.

[33] People v. Arce, 227 SCRA 406; People v. Magana, 259 SCRA 380; People v. Castromero, 280 SCRA 421; People v. Escober, 281 SCRA 498.

[34] People v. Gabayron, 278 SCRA 78; People v. San Juan, 270 SCRA 693; People v. Oliva, 282 SCRA 470.

[35] People v. Domantay, supra, Note 30 citing People v. Advincula, 96 SCRA 875; People v. Lood, 117 SCRA 467; People v. Aguirre, 143 SCRA 572; People v. Gecomo, 254 SCRA 82; People v. Garcia, 89 SCRA 440; People v. Saligan, 101 SCRA 264; People v. Vizcarra, 115 SCRA 743; People v. Umali, 116 SCRA 23; People v. Dawandawan, 184 SCRA 264; People v. Magana , 259 SCRA 380; People v. Empleo, 226 SCRA 454; also see People v. Salazar, 272 SCRA 615.

[36] People v. Uycoqua, 246 SCRA 769.

[37] See People v. Robles, G.R. No. 124300, March 25, 1999.

[38] Rule 133, Section 4.

[39] People v. Mahinay, G.R. No. 122485, February 1, 1999; People v. Alberca, 257 SCRA 613; People v. Abitona, 240 SCRA 335.

[40] Decision, p. 27; Record, p. 184.

[41] 208 SCRA 101, p. 104 [1992].

[42] Tsn., December 4, 1991, pp. 12-13.

[43] See People v. Marollano, 276 SCRA 84.

[44] People v. Midtomod, 283, SCRA 395.

[45] G.R. No. 119352, June 8, 1999.

[46] Supra., Note 37.

[47] People v. Tahop, G.R. No. 125330, September 29, 1999.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.