

PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. FELICISIMO MERZA Y DAVIS, DEFENDANT-APPELLANT.

G.R. No. 112238. November 22, 1994

Ponente: MELO, J.

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MELO, J.:

A charge for rape with homicide under Article 335 of the Revised Penal Code was lodged against accused-appellant in an Information reading:

That on or about the 9th day of October, 1990 in Quezon City, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, by means of force and intimidation, with leud design have carnal knowledge of one GENEROSA CORDOVA Y CABELAN alias "BINGBING", a minor, 12 years of age, without her consent and against her will and thereafter the accused with intent to kill, did then and there, strangled said victim thereby inflicting upon her serious and mortal wounds which were the direct and immediate cause of her untimely death, to the damage and prejudice of the heirs of the said victim in such amount as may be awarded under the provisions of the Civil Code.

Contrary to law.

(p. 6, Rollo.)

After trial, accused-appellant was found guilty as charged by the trial court in a decision dated August 13, 1993, the dispositive portion of which provides as follows:

ACCORDINGLY, judgment is hereby rendered finding FELICISIMO MERZA Y DAVIS GUILTY as PRINCIPAL beyond reasonable doubt of the crime of Rape with Homicide, and he is hereby sentenced to a jail term of RECLUSION PERPETUA.

On the civil aspect, the accused Felicisimo Merza y Davis is hereby ordered to pay the heirs of Generosa Cordova the sum of P50,000.00 as actual damages, the sum of P50,000.00 as moral damages and P50,000.00 as exemplary damages. Costs against the accused.

(p. 60, Rollo.)

Accused-appellant appealed, assigning the following alleged errors of the trial court:

I. The lower court erred in declaring the accused-appellant guilty of the crime of rape with homicide and consequently in sentencing him, among others, to a jail term of reclusion temporal completely disregarding that contrary to its findings, the accused-appellant has not been positively identified by any of the prosecution witnesses; specifically four (4) such witnesses, most of whom except one, are children, pointed to the accused-appellant in the police line-up constituted for the purpose as mere look alike of the suspect in that case while one (1) could not identify him; similarly it was the arresting officers who induced those witnesses to point to the accused-appellant, which is clearly unwarranted. Moreover none of those witnesses knew the circumstances involving the death and the alleged sexual abuse perpetrated against the aforesaid victim. If at

all, the evidence adduced by the prosecution is only circumstantial which is not sufficient to overcome the legal presumption of innocence of the accused-appellant. Such facts clearly bolster and strengthen the defense of alibi raised by the latter before the court a quo.

II. The lower court in rendering its questioned decision, likewise erred in holding the accused-appellant liable to pay the heirs of the victim actual, moral and exemplary damages, as well as costs of suit.

(p. 27, Appellant's Brief; ff. p. 78, Rollo.)

Upon a rigorous examination of the record, we find that the following facts, as succinctly synopsisized by the Office of the Solicitor General in appellee's brief, are fully borne out by the evidence:

On October 9, 1990, at about 10:00 o'clock in the morning, Generosa "Bingbing" Cordova, then age 8, Amornina Nagbuya, 8, Sonny Boy Nagbuya, 9, and Santiago "Ago" Cordova (Bingbing's brother) were on their way home after getting "malunggay from the house of their "lola-lolahan", at Filinvest, Quezon City (TSN, Jan. 25, 1991, pp. 5-8). On their way, they noticed a man following them (Ibid). He was Felicisimo "Jake" D. Merza (Ibid, p. 12). When Merza came near the group, he asked who was the eldest among them (Ibid p. 8). Bingbing answered that she was the eldest (Ibid). Thereafter, Merza suddenly grabbed Bingbing away from the group (Ibid, p. 9). Thereupon, Bingbing told her companions to follow them (Ibid). Amornina Nagbuya tried to follow them but Merza boxed her on the left eye, telling her not to follow them (Ibid, p. 10). Merza intimated to the group that he would be taking Bingbing along with him to the clubhouse at Filinvest to sign some papers (Ibid, p. 11). After having been boxed, Amornina Nagbuya desisted from following them because of fear (Ibid). Sonny Francisco, 12, and Ruel Galor, 11, both residents of Filinvest, saw Merza pulling Bingbing, who was then crying, on their way to the said clubhouse (TSN, July 12, 1991, p. 8; Aug. 30, 1991, p. 6).

On the following day, October 10, 1990, at about 10:00 a.m., Bingbing was found dead on the other side of the creek located at Filinvest, Quezon City (TSN, Jan. 25, 1991, pp. 12-13; June 3, 1991, p. 22). The medico-legal officer's autopsy report also showed that she was raped before she died (TSN, March 11, 1991, pp. 11, 16-18).

Consequently, an investigation on the gruesome death of the victim was conducted by the police officers assigned at the Central Police District PO3 Domingo Placido interviewed the children who were the companions of the victim just before Merza accosted the latter. And the children described him as "balingkinitan ang pangangatawan at kulot ang buhok" (TSN, Dec. 5, 1991, p. 11). He also interviewed a "Kagawad" of the barangay, who told him that Merza used to stand by near the place where the incident happened (Ibid, p. 12).

After having been informed by the wife of Merza's employer that Merza was in Siksikan Bridge, Talavera, Nueva Ecija, the police officers conducting the investigation proceeded to said place (Ibid, p. 14). When the police officers arrested Merza and informed him that he was a suspect in a rape-slay case, Merza pleaded the police officers to settle the case and not to bring him to Manila (Ibid, p. 17). Nevertheless, they brought him to Manila.

When they arrived in Quezon City, at Police Station No. 5, a line-up of suspects was formed, composed of about ten (10) persons, including Merza (Ibid, p. 19). Thereat, the children were led, one by one, to the room where the suspects were lined up, for them to identify the person who grabbed the victim from the group, and who was later seen with the victim before the fateful incident (TSN, Dec. 15, 1992, p. 16). In the line-up, Amornina Nagbuya and Sonny Nagbuya, during their turn, pointed to Merza as the perpetrator while Santiago Cordova was not able to recognize the culprit (Ibid, pp. 18, 20 & 21). Merza was also pointed to by Sonny Francisco as the person he saw pulling the victim, who was then crying, on their way to the clubhouse (Ibid, p. 25; TSN, Aug 30, 1991, p.6).

(pp. 2-5, Appellee's Brief; ff. p. 89, Rollo.)

Accused-appellant contends that the prosecution witnesses failed to positively identify him as the perpetrator of the crime, pointing out that said witnesses only stated that accused-appellant is a mere look-alike of the person responsible for the rape-killing of the victim. Accused-appellant's contention is devoid of persuasive import. True, the prosecution witnesses stated during the police investigation that accused-appellant is a look-alike of the man who snatched the victim from her companion. However, on the witness stand, the prosecution witnesses, Amornina Nagbuya, Sonny Boy Nagbuya, and Sonny Boy Fernandez, positively and unqualifiedly identified accused-appellant as the one who snatched the victim, as manifested in their testimony.

Amornina Nagbuya

FISCAL ULIBARRI

Q. If that man who you said grabbed Bingbing and who boxed you is in court, will you please point to him?

WITNESS:

A. Yes, sir, AYON PO.

INTERPRETER:

Witness pointed to a man inside the courtroom who when asked by the court identified himself as one FELICISIMO MERZA.

(TSN, Jan. 25, 1991, pp. 11-12)

Sonny Boy Nagbuya

FISCAL ULIBARRI:

Will you please describe to the court how Bingbing was taken.

WITNESS:

A. [A] MAMA told us who is the oldest among you[], I will ask him to sign something.

FISCAL ULIBARRI:

Q. Who is this man?

WITNESS:

A. Si JAKE.

FISCAL ULIBARRI:

Q. If that Jake is in court will you please point to him.

WITNESS:

A. That one, sir.

INTERPRETER:

Witness pointed to a person inside the courtroom who when asked by the court identified himself as FELICISIMO DAVIS MERZA. (TSN, March 4, 1991, pp. 8-9)

Sonny Boy Francisco

FISCAL ULIBARRI:

Q. If that man you saw who was holding Bingbing and he was crying at that time, will you please point to him?

A. That man, Sir.

INTERPRETER:

Witness pointing to a person who [when asked] answer [sic] by the name of FELICISIMO MERZA (TSN, Aug. 30, 1991, pp. 6-7)

(pp. 12-14, Appellee's Brief; ff. p. 89, Rollo).

The record being bereft of any evidence that the prosecution witnesses were motivated by ill considerations and intents, their testimony must be accorded full probative value. Moreover, said prosecution witnesses, all forthright and artless children of tender years, Amornina Nagbuya being then 8 years old at the time of the incident, Sonny Boy Nabuya, 9 years old, and Sonny Boy Francisco, 12 years old, can be relied upon to express the unvarnished truth.

In view of the foregoing findings that accused-appellant was positively identified by the prosecution witnesses as the perpetrator of the crime, necessarily accused-appellant's defense of alibi must fall for well-enshrined in our jurisprudence is the rule that alibi cannot prevail over the positive identification of the accused (*People vs. Catubig*, 205 SCRA 643 [1992]).

Finally, accused-appellant insists that he cannot be convicted as the evidence adduced by the prosecution is merely circumstantial. We find no merit in accused-appellant's contention. Conviction upon circumstantial evidence is authorized by the Rules of Court (Section 4, Rule 133). Direct evidence is not the only basis upon which the guilt of an accused may be proved; it may also be established through circumstantial evidence (*People vs. Cagadas, Jr.*, 193 SCRA 216 [1991]). Circumstantial evidence is sufficient for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt (Section 4, Rule 133; *People vs. Madriaga IV*, 171 SCRA 103 [1989]; *People vs. Cagadas, Jr.*, supra). The record is replete with circumstances inexorably establishing the guilt of accused-appellant. The following circumstances collated by the Office of the Solicitor General unavoidably lead to the guilt of accused-appellant:

1. On October 9, 1990, at about 10:00 am., appellant, who was then following the group of children, suddenly grabbed the victim away from her companions, at Filinvest, Quezon City (TSN, Jan. 25, 1991, pp. 5-8).
2. When Amornina Nagbuya, an eight year old companion of the victim, tried to follow them, appellant boxed her on the left eye, which led to a hematoma (*Ibid*, p. 10).
3. Sonny Francisco and Ruel Gabor saw appellant pulling the victim, who was then in tears, on their way to the clubhouse (TSN, July 12, 1991, p. 8; Aug. 30, 1991, p. 6).
4. On the following day, October 10, 1990, at about 10:00 a.m., the cadaver of the victim was discovered along the creek located at Filinvest, Quezon City (TSN, June 3, 1991, p. 22).
5. The autopsy, conducted on October 10, 1990, disclosed that the victim was dead for more than 12 hours but less than 24 hours (TSN, March 11, 1991, p. 13).
6. Appellant was the last person seen with the victim, under suspicious circumstances, on the day before she was found dead and sexually abused.
7. When appellant was arrested by the investigating police officer, at Talavera, Nueva Ecija, and informed that he is suspect in a rape-slay case, he pleaded them to settle the case and not to bring him to Manila (TSN, Dec. 5, 1991, p. 17).

8. Appellant's act of going to Talavera, Nueva Ecija, constituted flight, which evinces a guilty conscience.

(pp. 9-10, Appellee's Brief; ff. p. 89, Rollo.)

The foregoing circumstances fully comply with the requirements set forth under Section 4, Rule 133 of the Rules of Court. There is more than one circumstance; the facts from which the inference of the guilt of accused-appellant is drawn have been proven; and the combination of said circumstances produces no other conclusion than the guilt of accused-appellant beyond reasonable doubt.

Due to accused-appellant's failure to submit any argument in support of his second assigned error, we need not be unduly detained, for verily, the award of damages merely springs from the criminal act of accused-appellant (Article 100, Revised Penal code Section 1, Rule 111, Rules of Court).

WHEREFORE, the appealed decision is hereby AFFIRMED.

SO ORDERED.

Bidin, (Acting Chairman), Romero, and Vitug, JJ., concur.

Feliciano, J., on leave.

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