

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO MAGUAD Y NICOR, NELSON LLONOR, PETER DOE AND JOHNNY DOE, ACCUSED, NELSON LLONOR, ACCUSED-APPELLANT.

G.R. No. 116514. March 13, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

Stands of sugarcane bore mute witness to the rape and subsequent killing of Josephine Pelayo. Unfortunately for the perpetrator, they were not the only witnesses.

For the rape and killing, Romeo Maguad, accused-appellant Nelson Llonor, and two others, identified only as Peter Doe and Johnny Doe, were charged with the complex crime of rape with murder and robbery, in an information filed on August 14, 1991, to wit:

“That on or about the 30[th] day of July, 1991, in the City of La Carlota, Philippines, and within the jurisdiction of this Honorable Court, the above-named four (4) accused being then armed with knives, helped and aided one another and by means of force and intimidation, did, then and there, wilfully, feloniously and unlawfully have sexual intercourse in succession with Josephine Casas Pelayo, thereafter stab(bed) the victim several times resulting to (sic) her death and further said four (4) accused take (sic), steal (sic) and carry (sic) away her personal belongings.

That the commission of the above crime is attended by the aggravating circumstances of superior strength and committed in (an) uninhabited place.

AN ACT CONTRARY TO LAW.”[1]

Upon arraignment, Llonor and Maguad pleaded not guilty to the crime charged.

Thereafter, the prosecution presented Nestor Samban and Ireneo Cabuguason, two witnesses who purportedly saw the incident, Patrolman Remegio Reloj and Dr. Edwin Jayme.

Samban, a thirteen-year old, recounted that at around 8:30 a.m. of July 30, 1991, he was near the railroad at Hda. Najalin in La Carlota, herding a carabao with a certain Lloyd Gaupo who later left when Apa, a deaf-mute, joined them. By then, Samban had noticed three men loitering in the area. He recognized two of them as Maguad and Llonor, who is a security guard at Hda. Najalin. A woman, whom he recognized as Josephine Pelayo, passed by and the three men grabbed her. Josephine’s hands and feet were held by Maguad and Llonor, respectively, while the third man covered her mouth. The men then dragged her to the canal near the railroad. Samban, now frightened, left but returned at around 11:00 o’clock to retrieve a sack containing tools which he, in his haste, had left behind. This time, he saw four persons emerge from a canefield, including Maguad, who threatened to kill him if he revealed what he saw to anyone.

On cross-examination, Samban admitted that as a carabao herdsman living in La Carlota, he had to leave his residence at 3:00 a.m., riding on a truck to reach Hda. Najalin. After the incident, he stayed with Josephine’s

father, Jose, for one month. On the night in question, he participated in the search for the missing Josephine Pelayo, but it was only two days later, or on August 1, 1991, that he revealed the aforementioned occurrence to Jovy Egay, Josephine's brother-in-law. The records reveal that Samban's affidavit, taken by the police, failed to mention anything about the alleged abduction of Josephine, but only stated that he saw Maguad at the place of the incident and that the latter threatened to kill him.

On the other hand, Cabugason, a 36-year old farm laborer, testified that in the morning of July 30, 1991, at around 9:30 a.m., he was collecting firewood at a riverbank near Hda. Najalin when he heard a woman shout six times for help. Moving towards the railroad, from where the shouts emanated, he noticed a field where the sugarcane plants were moving, as if people were grappling therein. As he approached, he saw a man, whom he recognized as Llonor, on top of a woman, whom he likewise recognized to be Josephine Pelayo. Llonor had a knife pointed at Josephine's neck, his pants were lowered, and he was performing the sexual act on her. He also heard several persons talking nearby. Like Samban, he got scared and fled.

Patrolman Reloj testified that on July 31, 1991, in the course of the police inquiry into Josephine's death, they found the victim's cadaver in a sugarcane field, Field No. 22, with her skirt inserted in her vagina. Her clothes, underwear, and bag were scattered nearby. She had been stabbed fourteen times.

After considering Samban's testimony, they invited Llonor for questioning. During the investigation, Pat. Reloj saw a bloodstained knife in the possession of Llonor, which he confiscated. The knife was subsequently found to match the punctures found in the victim's skirt and shorts.

Dr. Edwin Jayme, who performed the autopsy on Josephine's cadaver, testified that the victim suffered fourteen stab wounds, the most fatal being one on the chest. The stab wounds all measured about one centimeter in width and three to four inches in length, indicating that only one weapon was used.

In rebuttal, the defendants raised the timeworn defense of alibi, alleging that they were elsewhere at the time of the incident. Maguad, testifying in his own behalf, alleged that he was harvesting rice in Hda. Alejandria, adjacent to Hda. Najalin, when the incident occurred. He presented a co-worker to corroborate his statement.

Likewise, Llonor claimed that at 9:00 a.m. of July 30, 1991, he was at home in Hda. Najalin fetching water for cooking. He heard Josephine Pelayo call his sister-in-law, Noemi Isidoro, asking the latter to accompany her. Noemi, who was then with a certain Grace Isidoro, however declined. He further claimed that he stayed at his house, cooking rice and viand, until 10:00 o'clock, after which he went to work, roving Fields 17 to 23, his security assignment, until 11:30 a.m. A certain Cresenciano Esmedia supposedly saw him during that time. He then went home to eat lunch, then returned to his post only at around 1:00 p.m. where he stayed until 6:00 p.m. At 8:00 in the evening, Jovy Egay passed by and asked him whether he had seen Josephine, who was apparently missing, to which he replied in the negative. Thereafter, Llonor joined a search party organized by the relatives of Josephine Pelayo, but it was their relievers who found Josephine's body. No other witnesses testified in Llonor's favor.

The trial court, in its evaluation of the evidence of the parties, gave short shrift to Samban's testimony, finding that:

“(T)he testimony of Nestor Samban however has yielded irreconcilable (sic) inconsistencies in his declaration, grave self-contradictions in his narrations and consequential improbabilities in his statements all on points material to the matter of the identification of the slayers of Josephine Casas Pelayo. For instance, Nestor Samban stated that he saw the accused and another person dragging the victim towards the canefield. Thereafter, Maguad held her hand while accused Nelson Llonor and another companion held her feet. He then ran home because he was afraid. And yet according to the same witness, he returned to the place where he saw

the accused and the victim at 11:00 o'clock in the same morning only for the purpose of retrieving the sack containing a crescent and a monkey wrench which he left earlier after running from the scene of the crime because of fear. The court can hardly believe such a tall tale considering his age. Normal human instincts and the promptings of human nature dictate a reaction utterly different from those taken by Samban.”[2]

Likewise, the trial court found it unbelievable that Samban, who testified that he even joined the search for the missing Josephine, did not immediately inform the Casas family, with whom he was then staying, of his harrowing experience. The court similarly found it incredible that Samban would leave La Carlota at 3:00 a.m. to go to Hda. Najalin just to herd a carabao which was not even theirs. The court a quo, moreover, emphasized the glaring discrepancy between Samban’s testimony and his sworn affidavit.

The trial court, however, gave full faith and credence to Ireneo Cabuguason’s testimony identifying Nelson Llonor as the person who sexually assaulted Josephine Pelayo.

After trial, the court a quo acquitted Romeo Maguad but found Llonor guilty of rape with homicide. The dispositive portion of the decision reads:

“WHEREFORE, viewed in the light of the preceding considerations, the court hereby renders judgment finding NELSON LLONOR guilty beyond reasonable doubt of the Special Complex crime of “RAPE WITH HOMICIDE” and hereby imposes upon him the penalty of RECLUSION PERPETUA, to pay the amount of ONE HUNDRED THOUSAND (P100,000.00) PESOS as damages without subsidiary imprisonment in case of insolvency. Pursuant to the provisions of Republic Act 6127 the accused Nelson Llonor is credited in full of the period of his detention provided he has complied with the aforesaid provisions of the law.

For utter lack of evidence, the court hereby pronounces the verdict of ACQUITTAL as against the accused ROMEO MAGUAD.

SO ORDERED.”[3]

Accused-appellant Llonor, now appeals to this Court, questioning his conviction and the trial court’s award of damages.

In support of his contentions, Llonor claims that Cabuguason’s testimony should not have been given faith and credence by the court. He claims that it was impossible for Cabuguason to have identified him as the perpetrator of the crime when, admittedly, the canes in the sugarcane field where the incident transpired were taller than people; Cabuguason was six arm lengths away; and the latter was admittedly frightened at the time. Furthermore, Llonor claims that it was unnatural for Cabuguason not to have helped the victim, whom he knew, when he was armed with a 15-inch bolo as against the 6-inch knife allegedly wielded by Josephine’s assailant.

These disclaimers fail to convince. Llonor was positively identified as the perpetrator of the crime by Cabuguason, who testified:

Q When you were at around six (6) arms length were you able to see who were these persons grappling in the canal?

A I saw a woman lying on the canal with a man on top of her.

Q By the way, did you come to know who was the one who was lying in the canal with a man on top of her?

A Yes, sir.

Q Who was she?

A Mrs. Josephine Cases (sic) Pelayo.

Q This man you said whom you saw on top of the woman lying on the canal were you able to identify him?

A Yes, sir.

Q Who was he?

A Nelson Llonor.

Q What was this Nelson Llonor do while he was on top of Josephine Casas Pelayo who was lying on the canal?

A I saw that a man was pointing a knife at the neck of a woman.

Q Aside from pointing the knife at the neck of a woman what was the man doing on top of a woman?

A I saw that he was making a motion of push and pull.

Q This man you identified as Nelson Llonor whom you saw on top of Josephine Casas Pelayo pointing a knife at Josephine Casas Pelayo and whom you said you saw doing a push and pull motion on top of Josephine Casas Pelayo, if he is here in the courtroom will you be able to identify him?

A Yes, sir.

Q Please point to this court?

A There he is (Witness pointing to the person whom when asked answered by the name of Nelson Llonor).

Q This Nelson Llonor whom you just pointed in court whom you just mentioned you saw doing the push and pull motion on top of Josephine Casas Pelayo, do you mean to tell the court he was doing the sexual act?

A Yes, sir.

Q After seeing Nelson Llonor on top of Josephine Casas Pelayo doing performing the sexual act, what did you do?

A I stood up immediately.

Q After standing up immediately, what else did you see?

A I saw that one person lying on top of Josephine Casas Pelayo was Nelson Llonor and woman was Josephine Casas Pelayo.

Q When you saw Nelson Llonor performing the sexual act on Josephine Casas Pelayo has he pants on or not?

A No (Witness pointing the location of the pants the pants were lowered down).

Q This Nelson Llonor whom you saw on July 30, 1991 having sexual act on Josephine Casas Pelayo prior to July 30, 1991, did you already know him?

A Yes, I know him because he was a security guard of Hda. Najalin.

Q After you stood up and see again more clearer Nelson Llonor doing the sexual act on Josephine Casas Pelayo, what did you do?

A I moved backward.

Q Why?

A Because I was afraid.[4]

Additionally, Cabuguason categorically identified the knife confiscated from Llonor as the same knife he saw used in intimidating the victim, viz:

Q You testified earlier that you saw Nelson Llonor pointing a knife on the neck of Josephine Casas Pelayo who was lying down on the canal, if that knife be shown to you, can you identify the same?

A Yes, sir.

Q I am showing to you a knife around six (6) inches from tip to handle, is this the knife which you saw being pointed by the accused Nelson Llonor on the neck of Josephine Casas Pelayo?

A Yes, sir.[5]

The court a quo gave full faith and credit to the above-quoted testimony and the identification of Llonor as the malefactor. We find no reason to disturb the same, it being axiomatic that the trial court's evaluation of the testimony of a witness is generally accorded not only the highest respect, but also finality, the lower court having had the direct opportunity to observe the witness on the stand and to determine if he was telling the truth or not.[6]

As to Cabuguason's failure to help Josephine, this Court has consistently ruled that persons do not necessarily react uniformly to a given situation, given that what may be natural to one may be strange to another.[7] Unchivalrous it may have been, but it is undeniable that Cabuguason witnessed how the crime was committed and who committed it.

In addition, the following pieces of circumstantial evidence point to the guilt of Llonor: he was in possession of a knife, whose blade exactly matched the punctures on the victim's shorts and skirt; the victim suffered stab wounds of uniform length and width, which stab wounds tallied with his knife; and the victim was found in Field No. 22, a sugarcane field within Llonor's security assignment, and a mere 7 to 10 minutes away from the latter's house.

Against this factual backdrop, all that Llonor could offer by way of defense is an alibi. Time and again, this Court has pronounced that for an alibi to prosper, it must be sufficiently convincing as to preclude any doubt as to the physical impossibility of the accused-appellant's being present at the locus criminis or its immediate vicinity at the time of the incident.[8] It is an established fact that Llonor's house, where he purportedly was at the time the crime was committed, was only 7 to 10 minutes away from the place of the incident; thus, it was not physically impossible for him to have been at the scene of the crime at the time of its commission.

Furthermore, the defense of alibi is inherently weak and cannot prevail over the positive identification of the accused-appellant as the offender.[9] As related beforehand, Cabuguason categorically identified Llonor as the author of the crime, rendering the latter's alibi and denial worthless.

Likewise, Llonor failed to present Noemi and Grace Isidoro, the persons allegedly at his house at 9:30 of that fateful day, to corroborate his alibi. Neither did Crescenciano Esmedia, whom he claimed saw him on July 30, 1991 at his post, testify in his behalf.

In fine, we hold that the evidence presented by the prosecution establishes beyond reasonable doubt that Llonor perpetrated the crime charged.

As to the award of damages, we find that the trial court correctly awarded P100,000.00 as damages, P50,000.00 being indemnity for death, in accordance with current jurisprudence, and P50,000.00 as moral damages suffered for the physical suffering, mental anguish, serious anxiety, moral shock, and social humiliation caused by the manner by which the victim was raped and killed. Having been found guilty of the crime charged, he is liable for damages caused by his wrongful act.[10]

Finally, while the prosecution charged Llonor with “rape with murder and robbery,” the trial court correctly found him guilty of the special complex crime of rape with homicide, there being no such crime as “rape with murder and robbery.” In the words of the trial court:

“(T)his case is wrongly denominated, without the defense having objected to the imperfection of the information. Following the doctrine laid down by the Supreme Court in the case of *People vs. Flores*, 195 SCRA 295, the crime charged is a Special Complex crime of Rape with Homicide. This is so because the commission of the crime of robbery which should appropriately be designated as theft, was only as an afterthought, as the accused was primordially impelled by an intent to commit a crime against chastity rather than against property.”[11]

The penalty imposable for rape with homicide is death, which, in view of its suspension by the Constitution at the time of the commission of the crime under review, could not be decreed by the trial court. The court a quo, thus, correctly imposed the penalty of reclusion perpetua.

WHEREFORE, the appeal is DISMISSED and the decision of the trial court finding accused-appellant Nelson Llonor guilty beyond reasonable doubt of the crime of rape with homicide is hereby AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J. (Chairman), Kapunan and Purisima, JJ., concur.

[1] Rollo, p. 9.

[2] *Ibid.*, p. 37.

[3] *Id.*, p. 51.

[4] TSN, October 17, 1991, p. 9-14.

[5] *Ibid.*, p. 14.

[6] *People vs. Magdamit*, G.R. No. 118130, September 24, 1997.

[7] *People vs. Queliza*, G.R. No. 124135, September 15, 1997, citing *People vs. Cabrera*, 241 SCRA 28 (1995); *People vs. Paguntalan*, 242 SCRA 753 (1995); *People vs. Halili*, 245 SCRA 312 (1995); *People vs. Espinoza*, 247 SCRA 66 (1995).

[8] *People vs. Andal*, G.R. No. 124933, September 25, 1997.

[9] *People vs. Montero*, G.R. No. 121983, August 11, 1997.

[10] Section 2(d), Rule 120, Rules of Court.

[11] Rollo, p. 50.

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