

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JACOB QUITORIO, JAYSON POMIDA AND PACIFICADOR CAMPOMANES, ACCUSED-APPELLANTS.

G.R. No. 116765. January 28, 1998

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused-appellants were charged with rape with homicide in an amended information filed on 16 April 1993 (and docketed as Criminal Case No. 129) before Branch 4 of the Regional Trial Court (RTC), Eighth Judicial Region, sitting in Dolores, Eastern Samar. The accusatory portion thereof read as follows:

On September 6, 1992 at about 12:00 o'clock midnight in Poblacion Dolores, E. Samar and within the jurisdiction of this Honorable Court, the above-named accused unlawfully conspired and helped one another and by means of force and intimidation have [sic] carnal knowledge with one Elena Dacutanan y Gabane and with the use of deadly weapons inflicted injuries upon said victim which caused the death of the latter.

Contrary to law.

Dolores, Eastern Samar, April 14, 1993.

(SGD.) CORNELIO M. UMIL II

Prosecutor I[1]

At the arraignment, each accused-appellant entered a plea of not guilty.

The prosecution presented the following as its witnesses for its evidence in chief: Benjamin Dongsal, Yolanda Caspe, Dr. Yolanda N. Bacsal of the Dolores Community Hospital, Gil Sobremonde of the Philippine National Police (PNP) of Dolores, Eastern Samar, and Rodrigo Gabane; while PNP Investigator Albert Donceras testified on rebuttal.

On their part, accused-appellants took the witness stand and each raised the defenses of denial and alibi. To corroborate their alibi, the following were presented: Gregorio Bantilan, for accused-appellant Jayson Pomida; Basilio Pomarejo, for accused-appellant Pacificador Campomanes; and Lito Librella, for accused-appellant Jacob Qutorio.

Accused-appellants likewise presented Romeo Campomanes, then Chief of Police of Dolores, Eastern Samar and the brother of accused-appellant Pacificador Campomanes, Matilde Cardona, Mrs. Patricia Almazan, Artemio Almasan and Engineer Agrifino Senubio.

The trial court gave full faith and credit to the prosecution's evidence, and finding that the People established accused-appellants' guilt beyond reasonable doubt, promulgated its decision[2] on 14 July 1994, decreeing as follows:

Accordingly, this court do [sic] hereby sentence [sic] accused Jacob Quitarior and Jayson Pomida each to Two [terms of] Reclusion Perpetua and each to an additional imprisonment [term] of ten (10) years of prison mayor, as minimum to seventeen (17) years and four (4) months of Reclusion Temporal, as maximum.

If reclusion perpetua (though not synonymous [sic] [with] but distinct from life imprisonment and an [being] indivisible penalty) is to be computed at thirty (30) years, then the total penalty for each of the two accused, Jacob Quitarior and Jayson Pomida would be as it is hereby ordered to be seventy (70) years as minimum to seventy-seven (77) years and four (4) months, as maximum.

The third accused, Pacificador Campomanes, who at the time of the commission of the crime was only 16 years, 9 months and 9 days having been born only on November 27, 1975, as evidenced by his Certificate of Live Birth found on page 327 and Certification found on page 49 of the records, is a Youthful Offender.

Considering therefore his age of about 17 years only at the time of the commission of the crime, he shall be entitled to a penalty next lower in degree than that prescribed by law.

The law provides that: "When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death." (Last par. of Art. 335, Revised Penal Code, as amended by RA 2638, approved June 18, 1960, and RA 411, approved June 20, 1964).

However, in the case of *People vs. Narit*, G.R. No. 77087, May 23, 1991:

The Supreme Court considered the death penalty as no longer impossible [sic] in consonance with the provision of Section 19(1), Article III of the 1987 Constitution, hence, the death sentence imposed on the accused-appellant has been automatically commuted to reclusion perpetua.

As a consequence, the penalty of reclusion perpetua which should have been imposed on the third accused, Pacificador Campomanes, is hereby reduced to one degree lower pursuant to paragraph 2 of Article 68 of the Revised Penal Code. That is, to reclusion temporal or 12 years and 1 day to 10 years.

Applying the indeterminate sentence law, the accused Pacificador Campomanes for one count and that is for himself alone is hereby sentenced to an indeterminate penalty of imprisonment ranging from 10 years of prison mayor, as minimum to 17 years and 4 months of reclusion temporal, as maximum.

But having conspired with the other two accused, Jacob Quitarior and Jayson Pomida in raping and killing the victim Elena Gabane, he is further sentence[d] to two more [terms of] 10 years of prison mayor as minimum to 17 years and 4 months of reclusion temporal, as maximum.

The total penalty therefore of accused Pacificador Campomanes is thirty (30) years, as minimum to fifty-two (52) years, as maximum.

This court further orders the three accused herein to indemnify joint and several [sic] the heirs of the victim Elena Gabane, the sum of P50,000.00 as actual damages for the death of the said victim; P75,000.00 as moral damages; P25,000.00, as exemplary damages; P7,100.00 also representing the total actual expenses in connection with the death of the victim Elena Gabane; and to pay the cost [sic], also joint and several [sic], without subsidiary imprisonment in case of insolvency

The accused, Pacificador Campomanes was released on recognizance while this case was still pending for preliminary investigation before the Municipal Circuit Trial Court, but with his conviction his recognizance is hereby ordered cancelled and without anymore force and effect. This accused, Pacificador Campomanes therefore, should be, as it is hereby ordered detained until this case is finally decided by the higher court, should there be an appeal by the three accused herein within the 15-day reglamentary [sic] period for appeal.

x x x

After a careful perusal and scrutiny of the records of this case, the same is wanting of an “agreement” signed by the three accused herein to the effect that during their detention period, they will abide by the same disciplinary rules imposed upon convicted prisoners.

So in the event this decision of conviction against the three accused herein is affirmed on appeal, should they appeal, the three accused shall only be entitled to four-fifth (4/5) of the time during which they have undergone their preventive imprisonment, which commenced on November 3, 1992, as evidenced by the “Receipt of Detainee”, found on page 46 of the records of this case.

SO ORDERED.

The evidence for the prosecution is summarized by the Office of the Solicitor General, as follows:

On September 6, 1992, Elena Gabane, a singer-guitarist of the United Pentecostal Church of Dolores, Eastern Samar, told the family of Benjamin Donsal, a “brother” pastor with whom Gabane had been staying, that she was going home later that night to Cadayao, Jiabong, Samar. She was supposed to ride the Roureyjay bus bound for Catbalogan which normally leaves at midnight (TSN, Oct. 26, 1993, pp. 2-3).

At about midnight, Yolanda Caspe was on her way home from the house of her friend Tilde, where they were having a drink. At the corner of Tegio St. and the provincial road, she saw three male persons carrying or dragging a woman with long hair and wearing a white jacket and short skirt. She was not able to see the face of the woman who was partly covered but she was able to recognize the three men. The area was well lighted by the fluorescent lamp in the street and by the moonlight. Pacificador Campomanes was holding the woman by her left armpit while Jacob Qutorio was supporting her by her right armpit. Jason Pomida was destroying the wire fence of the school. Upon seeing her, Campomanes beckoned to her. Afraid, Caspe ran away using a different route to her house. (TSN, June 29, 1993, pp. 2-7).

The following morning, a woman, who turned out to be Elena Gabane, was found dead in the grounds of the Dolores Elementary School. She was raped and her body bore several fatal stab wounds. The report of Dr. Yolanda Bacsal who conducted a post mortem of the cadaver, contained the following findings:

“CHEST: Stab wound, 2 cms longest diameter, 13 cms depth, clean cut edges, along the 3rd intercostal space, parasternal area, left, directed downwardly, hitting the heart.

Stab wound, 2 cms longest diameter, 5 cms depth, clean cut edges, along the 5th intercostal space, parasternal area, left.

Stab wound, 2 cms longest diameter, 5 cms depth, 3rd intercostal space, clean cut edges, anterior axillary line, left.

Stab wound, 2 cms longest diameter, 18 cms depth, clean cut edges, along 5th intercostal space, midclavicular line, left.

Stab wound, 3 cms longest diameter, 8 cms depth, clean cut edges, 2nd intercostal space, midclavicular area, right.

Stab wound 3 cms longest diameter, 18 cms depth, clean cut edges, 4th intercostal space, directed upwardly parasternal area, right.

Stab wound, 2 cms longest diameter, 8 cms depth, clean cut edges, 4th intercostal space midclavicular, right.

Stab wound, 2 cms longest diameter, 3 cms depth, 4th intercostal space, parasternal area, right.

GENITALIA: Right labia minora lacerated.

Vaginal canal, admits 2 fingers without difficulty.

Hymen lacerated at 6:00 o'clock, 5:00 o'clock. 12:00 o'clock, compared to the face of the clock, V-shape in appearance."

Caspe was able to identify the body of the victim as the same woman she saw the night before in the company of the appellants because of her long hair and attire. She easily identified the appellants in a line-up of ten men (TSN, June 30, 1993, pp. 15, 22, 27-28).[3]

The trial court convicted accused-appellants on the basis of the following circumstantial evidence, which, when combined, sufficed "to produce a conviction beyond reasonable doubt," to wit:

(1) The positive identification by prosecution witness Yolanda Caspe of accused-appellants, i.e., from a distance of 15 to 20 meters, she clearly saw Pacificador Campomanes holding the left arm of the victim by her armpit and his right arm holding a weapon; Jacob Quitarior holding the victim's right arm and armpit; and Jayson Pomida destroying and making an opening near the corner of the hog wire fence of the Dolores Elementary School, Dolores, Eastern Samar.

2) The finding of Dr. Yolanda N. Bacsal that the victim suffered eight (8) serious and fatal wounds and was raped, possibly by more than one person;

3) The fact that on the morning of 7 September 1992, the police found, within the premises of the Dolores Elementary School, the corpse of a woman who was later identified as Elena Gabane, the victim;

4) The admission of accused-appellant Jayson Pomida in his affidavit (Exhibit 3-B) that he recognized the victim Elena Gabane as the woman being carried allegedly by PFC Oscar Renomeron, Danilo Segubio and John Doe on the night of September 6, 1992; and

5) The rebuttal testimony of Albert Donceras, PNP Investigator, that at the PNP Headquarters in Borongan, Eastern Samar, prosecution witness Yolanda Caspe pointed out Pacificador Campomanes and Jacob Quitarior as the ones holding the left arm and the right arm, respectively, of the victim Elena Gabane; and Jayson Pomida as the one destroying and making an opening in the hog wire fence of the Dolores Elementary School; and that these accused did not object after they were so pointed out.

The trial court further ruled that conspiracy among accused-appellants was sufficiently established by their joint acts of carrying the victim and placing her inside the school compound. In view thereof, the RTC held that each accused-appellant was liable for three separate crimes of rape with homicide, namely, that personally committed by him and that committed by each of the other two accused.

Accused-appellants then seasonably interposed the instant appeal.

In our resolution of 5 August 1996, we dismissed the appeal of accused-appellant Pacificador Campomanes for failure of his bondsmen to surrender him, thereby failing to comply with the resolutions of 22 May 1995, 13 December 1995 and 6 March 1996. Judgment on the bond was thereafter entered. This appeal then proceeds only insofar as accused-appellants Jacob Quitarior and Jayson Pomida are concerned.

In their Appellants' Brief, accused-appellants contend that the trial court erred:

I

... IN CONVICTING [THEM] OF THE CRIME OF RAPE WITH HOMICIDE BASED SOLELY ON CIRCUMSTANTIAL EVIDENCE.

II

... IN GIVING CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS YOLANDA CASPE.

Accused-appellants discuss these assigned errors jointly and, in the main, denounce the credibility of the

testimony of Yolanda Caspe, thus:

Her testimony is unworthy of belief. She does not even know the family name of Tilde whom she considers as her friend (TSN, p. 13, June 29, 1993). She does not really know the actual time she went to Tilde's house, the time they started drinking and the time they finished drinking because she did not have a time piece then (TSN, p. 5, June 30, 1993), and besides she does not know how to tell the time and neither can she tell how long is one minute or one hour (TSN, p. 8, Oct. 12, 1993). How was she able to tell that they started drinking at 11:00 o'clock and she went home at 12:00 o'clock? Was she coached to state that particular time in order that her testimony will jibe with the testimony of Dr. Yolanda Bacsal, the doctor who conducted the post mortem examination, that the victim died probably at 12:00 o'clock midnight or at about 12:30 o'clock? (TSN, p. 12, July 28, 1993)

It is also quite intriguing that a woman, single at that (although she testified on cross-examination that she had children, TSN, p. 8, Oct. 12, 1993) would be out of her house for a drinking spree during such unholy hour when there was even no occasion [sic] to celebrate (TSN, p. 6, June 30, 1993).

Witness Yolanda Caspe went on to testify that on her way home, she saw, at a distance of fifteen (15) to twenty (20) meters, the three accused, namely, Pacificador Campomanes, Jacob Quitariorio, and Jayson Pomida. Accused Pacificador Campomanes was holding the left arm of a woman, whom she later came to know as Elena Gabane; accused Jacob Quitariorio was holding the right armpit of Elena Gabane; and accused Jayson Pomida was destroying and making an opening at the wire fence of the Dolores Elementary School. The three accused then tried to place the victim inside the wire fence. The accused then noticed her presence and one of them, Pacificador Campomanes in particular, beckoned her with a weapon and so she took another street and ran home, took her supper and slept.

On cross-examination, she even described the attire of the victim (TSN, p. 27 & 28, JUn [sic] 30, 1993) and each of the accused as follows:

- Accused Pacificador Campomanes was wearing white shorts, white sando, and white hat;
- Accused Jacob Quitariorio was wearing maong pants, gray T-shirt the sleeves of which were detached, and wearing slippers (tsenelas); and
- Accused Jayson Pomida was in fatigue pants cut on the knee with sleeveless white T-shirt. (TSN, p. 25, June 29, 1993)

The foregoing testimony is incredible. If said witness had in fact seen such shocking incident where she herself was frightened by one of the accused, it is so surprising that she could relate in detail not only each and every act of the accused but even their respective attire. Is this not a [sic] proof of a coached and rehearsed witness? Of a prevaricated story?

Furthermore, if the herein accused were the perpetrators of the crime charged and had in fact noticed the presence of Yolanda Caspe, will it not be more in harmony with human nature that herein accused would have exerted every effort to eliminate the witness and not merely frighten her? In this jurisdiction well-settled is the rule that evidence to be believed must proceed not only from the mouth of a credible witness but the same must be credible in itself as when it conforms to the common experience and observation of mankind. (People vs. Jalon, 215 SCRA 680).

x x x

Furthermore, the prosecution failed to rebut the testimony of Patricia Almazan that there was no electric bulb at the area where the incident happened. This is very material to the prosecution. Considering the time of the incident which is 12:00 o'clock midnight and the distance of the alleged eyewitness from the place of the incident which is about 15 to 20 meters (or even 30 meters, as declared on cross examination, TSN, p. 9 & 16, June 30, 1993) the illumination coming from the moonlight would not give the witness a clear view of the

incident much less of the identity of the accused. The witness having also consumed two bottles of “beer grande” together with her friend, the same surely affected her senses, particularly her vision. As such, there is serious doubt on the identification made of accused-appellants as the culprits. It has been held that the identity of the offender like the crime itself must be proven beyond reasonable doubt. (*People vs. Jalon*, supra).

In the Appellee’s Brief, the Office of the Solicitor General (OSG) urges us to affirm the challenged judgment as the guilt of accused-appellants was proven beyond reasonable doubt; further, there is no reason to disturb the findings and conclusion of the trial court as to the credibility of Yolanda Caspe, who had no motive to falsely implicate accused-appellants. Although there was no eyewitness to the actual commission of rape and the killing of the victim, the OSG asserts that the following circumstantial evidence clearly linked accused-appellants to the crime, viz:

(i) a body of the woman was found dead in the grounds of the Dolores Elementary School; (ii) the body bore several fatal stab wounds and had been sexually molested; (iii) there was no sign of struggle or blood (except where she was lying) in the area where she was found, indicating she was killed elsewhere; (iv) her death occurred at about midnight of September 6, 1992; (v) at about that time, she was seen by eyewitness Caspe in the company of appellants in the vicinity of the school where her body was found dead; (vi) appellants were carrying or holding the woman in a way that created suspicion, as they were holding her by the armpits; (vi) [sic] in the area where the victim was last seen alive near the corner of the school, blood stains were found; and (vii) appellants were easily identified by Caspe in a police line-up. All the foregoing circumstances, taken together, point to appellants as the culprits.

A scrutiny of the evidence convinces us that accused-appellants deserve to be acquitted, not necessarily because they did not commit the crime charged, but in light of the prosecution’s failure to prove their guilt beyond reasonable doubt and inability to overturn the presumption of innocence guaranteed by the Constitution.[4] In criminal cases, it is incumbent upon the prosecution to establish its case with that degree of proof which produces conviction in an unprejudiced mind,[5] with evidence which stands or falls on its own merits and which cannot be allowed to draw strength from the weakness of the evidence for the defense.[6]

Indeed, a conviction in this case could only have been had on the basis of circumstantial evidence which, under Section 4 of Rule 133 of the Rules of Court, is sufficient to convict provided the following are present:

- There is more than one circumstance;
- The facts from which the inferences are derived are proven; and
- The combination of the circumstances is such as to produce a conviction beyond reasonable doubt.

As jurisprudentially formulated, a judgment of conviction based on circumstantial evidence may be upheld only if the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person; i.e., the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.[7]

In the instant case, we note that only the fact of the victim’s death was sufficiently proven, as the evidence to prove the commission of rape is weak. The presence of hymenal lacerations, as found by Dr. Yolanda Bacsal, was not sufficiently shown to be due to the insertion of the male organ under circumstances that would qualify as rape. In the first place, Dr. Bacsal admitted that her examination of the victim was the first of this type she conducted since becoming a doctor, and that her only basis for concluding that the victim was raped was the presence of the hymenal lacerations. Yet, Dr. Bacsal admitted that the mere presence of hymenal lacerations due to sexual intercourse did not necessarily mean that the victim had been raped.[8] Likewise, the doctor’s qualification as an

expert was unconvincing as she could not even answer the questions as to her basis for stating that it was possible that more than one person raped the victim; and as to the period of time that had lapsed from the infliction of the lacerations until she conducted the examination at 10:00 a.m. of 7 September 1992, thus:

Q

What is then your basis in telling the court that the victim could have been raped?

A

There were lacerations at 6:00 o'clock, 5:00 o'clock to 12:00 o'clock.

Q

Since you became a doctor, this is your first of a medical case, am I correct?

A

Yes, sir.

Q

In other words, you have not yet examine any other victim who have suffered the same thing as the victim in this case, am I correct?

A

Yes, sir.

Q

Your findings doctor under exhibit "A-3" under the heading Genitalia says that the vaginal canal admits 2 fingers without difficulty without resistance and the hymen lacerated at 6:00 o'clock, 5:00 o'clock to 12:00 o'clock, compared to the face of the clock, and V-shape in appearance, according to your testimony you said that the victim was raped, am I correct, doctor?

A

Yes, sir.

Q If a woman who suffers sexual intercourse with a man suffer hymenal laceration without necessarily been rape?

A Yes, sir.

Q What is again your basis doctor in telling the court in your direct testimony that it is possible that more than 3

or more than 1 person raped the victim?

A (No answer).

Q Is it also possible that she was rape[d] by only one person?

A Yes it is possible.

Q You told the court that this hymenal laceration were [sic] compared to the face of the clock, V-shape in appearance and when asked by the Prosecutor you told the court that these are fresh wounds, did I get you right?

A Yes, sir.

Q Could you determine to the court, how many hours had lapse from the time these lacerations occurred [sic] until you conducted your examination at 10:00 o'clock in the morning of September 7 if you remember?

A (No answer).

Q You are not in a position to tell doctora?

A (No answer).[9] (underscoring supplied)

Worse, when asked what her basis was for concluding that the victim was a virgin at the time she was "raped," Dr. Bacsal merely replied, without any further qualification, that the vaginal canal admitted two fingers, thus:

Q

Was Miss Gabane virgin at the time she was raped?

A

Yes, sir.

Q As an expert witness, how did you come to the conclusion that Miss Gabane was virgin at the time she was raped?

A Because the vaginal canal admits two fingers.[10]

However, that "the vaginal canal admits two fingers" is hardly proof of a rape victim's virginal state.

We now resolve the liability of accused-appellants.

There is only one circumstance which could have linked them to the brutal slaying of Elena Gabane, viz., their having been seen dragging the body of a woman toward the premises of the Dolores Elementary School, as testified to by Yolanda Caspe. The veracity then of Yolanda's claim depends entirely on her credibility, and accused-appellants, quite understandably, leave nothing to chance to convince us that Yolanda's testimony should not be accorded the slightest bit of credence.

It is settled that this Court will not interfere with the judgment of the trial court in passing on the credibility of witnesses, unless there appears, on record, some facts or circumstances of weight and influence which the trial court overlooked and which, if considered, would affect the result of the case. The reason therefor is founded on practical and empirical considerations. The trial judge is in a better position to decide the question of credibility since he personally heard the witness and observed his deportment and manner of testifying.[11] Our reading of the transcripts of the stenographic notes of the testimony of Yolanda Caspe reveals circumstances that cast serious doubt as to her truthfulness or greatly impair her credibility.

First. It is doubtful if Yolanda, as she testified during direct examination, was in the house of Tilde at 11:00 p.m. of 6 September 1992. In her statement[12] taken on 23 September 1992 by PNP officer Albert Donceras, but subscribed and sworn to on 5 October 1992 before Municipal Circuit Trial Judge Ricardo Lapesura, Yolanda declared that she was, at that hour, in the house of Yolly who invited Yolanda for a snack because Yolanda was one of the sponsors at the baptism of Yolly's child. Yolanda's explanation that she did not mention this to Donceras[13] is lame. Moreover, as Yolanda likewise testified during direct examination, it was not a "snack" that she partook of, but two "grande" (big) bottles of beer. Further, as Yolanda admitted on cross-examination, she was not invited by Tilde nor Yoly; she invited herself.[14] We find this portion of Yolanda's testimony, however, at odds with the test of credibility in light of Yolanda's admission that said visit was her first to Tilde's residence.[15]

Second. We likewise doubt whether Yolanda was in full possession of her physical and mental faculties, given her admission that she drank two big bottles of beer with Tilde. There is no evidence whatsoever that Yolanda was accustomed to this level of alcohol intake, and that unlike a normal person, her having imbibed such a prodigious quantity of alcohol did not leave her reeling. Notably, that Yolanda's ability to perceive was affected by the beer she imbibed was evidenced by her confusion as to the number of men she saw. In her sworn statement,[16] she categorically declared that she saw four men and even mentioned their names, to wit: the three accused-appellants and one Rommel Padro, with the latter serving as the look-out. Thus her answers to the fifth and ninth questions in the sworn statement:

05.Q

Did you recall any incident that occurred [sic] while you were [on] the street?

A.

Yes sir, while I was on my way home far from the house of Yolly, who is my friend, and who invited me for a snack because I was one of the sponsor[s] of her child in the baptismal [sic], and while I was [o]n the street of the back of the Dolores Central School Campus. I saw four (4) persons carrying a woman, one person holding the left arm, one person holding the right arm and a person was opening the hog wire fence of the school fence while another person was a look out near the fence.

X X X

09.Q Who was the person holding the right and the left arm[s] and the person who was opening the hog wire fence of the school fence and the person to be [sic] the look out of those person[s] if you know?

A Pacificador Campomanes was holding the left arm Jacob Qutorio was holding the right arm while Jason

Pomeda [sic] was the one opening the hog wire fence of the school and Rommel Padro was the look out man.

Yet, in her testimony in open court, she mentioned seeing only three men, namely, accused-appellants herein.[17] And when confronted during cross-examination with her aforementioned answers in her sworn statement, she attempted to justify the inconsistency by claiming that the aforequoted question and answer No. 05 were not asked of her and were not given by her, respectively, thus:

Q

You just identified in court your affidavit which according to you were [sic] sworn before the Municipal Judge and the contents were read and explained to you, I will read to you question and answer number 5 in our exhibit “1” and I quote, “Did you recall any incident that occurred [sic] while you were [on] the street?” and your answer is, “Yes, sir while I was on my way home from the house of Yolly, who is my friend, and who invited me for a snack because I was one of the sponsors of her child in the baptismal [sic], and while I was [o]n the street at the back portion of the Dolores Central School Campus, I saw 4 persons carrying a woman, one person holding the left arm, one person holding the right arm and a person was opening the hog wire fence of the school fence while another person was a look out near the fence”, do you remember having been asked that same question and having given the same answer?

A

I did not.

Q The question and answer which was just read to you, you just said a while ago that you do not recall having been asked that question and having giving the same answer, is that correct?

A Yes, sir.

Q In other words, this particular portion of your affidavit was not actually asked from you and you did not give the same answer, is that correct?

A No, sir.[18]

Worse, aware of the difficulty of extricating herself from her web of falsehoods, Yolanda even had the temerity to suggest that Donceras (or some other person) supplied the false information that she saw four persons carrying the woman, and had likewise furnished the name of Rommel Padro, whom she did not even know. Thus, while still on cross-examination, she testified:

Q

Did you not say in your direct testimony that you saw these three persons bringing a woman whom you do not know whether it [sic] was dead or alive?

A

Yes, sir.

Q You saw only three accused not four?

A The woman whom they were carrying was the ... four[th].

Q I am asking you Mrs. Witness along [sic] the woman according to you in your testimony, you saw only three not four?

A Three.

Q So, the fourth person that you saw was the woman?

A Yes, sir.

Q Do you know one Rommel Padro?

A No, sir.

Q Are you sure?

A Yes, sir.

Q I will read to you question and answer number 6 in your affidavit, exhibit "I", the question read this way and I quote, "Who were these persons if you know?, your answer was, "It was Jacob Quitaro, Jayson Pomida, Rommel Padro and Pacificador Campomanes," my question is this, do you recall having asked that question and having given the same answer?

A No, sir I only answered three.

Q So, that answer which was just read to you, the question and answer number 6 on exhibit "I" of your affidavit is not true because you just told now that there were three?

A I saw only three.[19]

The denial, simply put, leaves us incredulous. Yolanda's statement was taken on 23 September 1993 by PNP officer Albert Donceras and subscribed and sworn to before Judge Lapesura on 5 October 1992. Donceras was clearly performing his official duty in taking Yolanda's statement; hence, in absence of any showing to the contrary, the presumption that official duty has been regularly performed must stand.[20] Yolanda cannot then be heard to say that Donceras did not ask question no. 05 of her and that she did not answer as therein stated. It is likewise to be presumed that Judge Lapesura, in the performance of his official duty, must have satisfied himself that, among other things, the answers to the questions propounded by Donceras were indeed made by Yolanda, considering the solemnity of the oath he administered to her. As a matter of fact, during the preliminary examination,[21] Judge Lapesura directed Yolanda to examine and read her sworn statement, after which, she explicitly admitted it to be of her making. Despite having been afforded ample opportunity to correct or complain about any erroneous statements, she failed to disavow any of her statements.

Yolanda's inclination to falsehood, however, did not last long. On the second day of her cross-examination she, perhaps unwittingly, admitted that Donceras did in fact ask her the subject questions and that she so answered them, thus:

Q

So Sgt. Donceras conducted an investigation of your person at Borongan, is that correct?

A

Yes, sir.

Q

You were asked questions and you gave corresponding answers?

A

Yes, sir.

Q

And those questions and answers which you made were reduced by Donceras into writing?

A

Yes, sir.

Q

And as a matter of fact after it was reduced into writing you were made to sign the same?

A

Yes, sir.

Q

Now, I am informing you again that this Exhibit "I" is a sworn statement of Yolanda Caspe taken by Albert Donceras at the Borongan Prov'l. Headquarters of the PNP, on Sept. 23, 1992, now my question is, is this the same statement which according to you just now was made and reduced into writing?

A

Yes, sir.[22]

Third. We note yet another set of circumstances that does not augur well for Yolanda's credibility as a witness.

Yolanda estimated that she was 20 to 30 meters away when she saw the three or four persons.[23] At that time, even with the moonlight and the fluorescent light which Yolanda claimed to have illuminated the place,[24] we refuse to believe that she was able to take special note, not only of the faces of the persons she saw, but likewise, how they were dressed and even to the extent of being able to discern the color of their clothes, to wit: Jacob Qutorio wore "maong" pants and a gray T-shirt with detached sleeves; Jayson Pomida had on fatigue pants "cut on the knee" and a white sleeveless T-shirt; while Pacificador Campomanes wore white shorts and a white "sando." [25] If even to further tax her credibility, Yolanda added, on cross-examination, that the "sando" of Campomanes had holes.[26] As to the attire of the victim, Yolanda narrated that the woman she saw wore a short checkered black skirt and white jacket,[27] despite the fact that earlier in her testimony, Yolanda admitted she was unable to see the clothes of the woman since her view was obstructed by Jacob Qutorio, thus:

Q

You were at a distance of around 20 to 30 meters so much so that you saw the woman wearing a short skirt and a white jacket, did you not say so?

A

Yes, sir.

Q

But when you were asked by the Court what you observed on [sic] her dress or clothes you said you did not see because somebody was covering the woman and this was Jacob Qutorio, did you not say so?

A

Yes, sir.

Q

So, Jacob Qutorio was in front of the woman, is that correct?

A

Yes, sir.[28]

Fourth. Yolanda exhibited conduct or behavior grossly contrary to ordinary human experience. Despite allegedly seeing a woman, probably dead by the manner her body was being held and dragged, and after even being threatened by one of the woman's assailants, Yolanda simply went home and did nothing but sleep. She then told no one of what she witnessed, although by 7:00 a.m. the following morning, she already knew that a woman had been raped and had concluded that the rape victim and the woman she had seen the night preceding were one and

the same.[29] This deafening silence, despite the fact that Yolanda knew the barangay captain of the place where the Dolores Elementary School was located and some policemen of Dolores,[30] is beyond us. Likewise, as declared by her in her sworn statement and reiterated on cross-examination, she saw policemen inspecting and investigating the crime scene, thus:

Q

I will read to you again Mrs. Witness question and answer No. 14 on Exhibit “1” which is your sworn statement, I quote, “The following day, September 7, 1992, what did you observed [sic] from [the] people of Dolores, Eastern Samar?” And your answer was, I quote, “At about 7:00 o’clock in the morning of that day, I learned from persons that there was a lady about 17 years old, who was killed, and I saw some Policemen inspecting and investigating the crime scene, and I learned later that the woman was raped.” Do you also recall having been ask[ed] and having given the same answer?

A

Yes, sir.

Q

I will read again the next question and answer No. 15, I quote, “What did you observed [sic] from the Police Investigator, if you know?” Your answer was, I quote, “I observed that they inspect[ed] and investigate[d] from [sic] the hog wire fence where I saw the four persons in [sic] the night before that day of September 7, 1992, carrying a woman.” Do you also recall having been ask[ed] that question and having given the same answer?

A

Yes, sir.[31]

Yet, she opted to do nothing. True to form, however, she once more contradicted herself as these answers were diametrically opposed to those which she had given just two (2) pages earlier, reckoned by the pagination of the transcripts, to the effect that she did not see policemen investigating the premises of the Dolores Elementary School on the morning of 7 September 1992, thus:

ATTY. GAVAN:...

Q

Now, you just saw the body of the victim while [sic] being alighted from the patrol car from the answer of yours, am I made to understand that you did not go to the crime scene on [sic] the following morning?

A

I did not go to the school, sir.

Q You are also sure of your answer?

A Yes, sir.

Q So you did not see the policemen at the scene where you saw the accused on [sic] the night before?

A No, sir.

Q Are you sure of our answer?

A Yes, sir.[32]

All told, we can hardly be blamed for harboring grave doubts as to Yolanda's credibility as a witness, resulting in our inability to reconcile our conscience with the verdict of the trial court.

Before we close, however, some observations regarding the decretal portion of the appealed decision are in order. First, it is the longest we have seen thus far in cases which have reached us, the trial court discussing therein matters properly belonging in the body of the decision. In criminal cases, trial judges must strictly observe Sections 1 and 2 of Rule 120 of the Rules of Court. Second, the trial court erroneously ruled that the penalty of reclusion perpetua was to be computed at thirty (30) years, and that accused-appellants Jacob Qutorio and Jason Pomida, each sentenced to two terms of reclusion perpetua and to an additional penalty of 10 years of prison mayor as minimum to 17 years and 4 months of reclusion temporal as maximum, should each serve a total of 70 years as minimum to 77 years and 4 months as maximum. Under Article 27 of the Revised Penal Code, the duration of reclusion perpetua is from 20 years and 1 day to 40 years. The thirty-year period for reclusion perpetua is only for purposes of successive service of sentence under Article 70 of the Revised Penal Code. Third, assuming that the trial court was correct in holding that conspiracy attended the commission of the crime, for which reason each accused was liable for three offenses, viz: that committed by him and those committed by each of his two co-accused, then the penalty of accused-appellants Jacob Qutorio and Jason Pomida should each be reclusion perpetua for that committed by Pacificador Campomanes, and not the penalty imposed on the latter for the crime he committed since his reduced penalty was due to the mitigating circumstances of minority under Article 68(2) of the Revised Penal Code. Mitigating circumstances are personal to an accused in whose favor they are determined to exist and cannot be enjoyed by his co-conspirators or co-accused. Fourth, while the trial court was correct in ruling that the prescribed penalty for rape was death, but that could not, however, be imposed in view of the prohibition in Section 19(1) of Article III of the Constitution, the RTC nevertheless erred in reasoning that the prescribed penalty was changed to reclusion perpetua, hence, the penalty next lower in degree was reclusion temporal. In *People v. Muñoz*, we ruled that the constitutional prohibition did not alter the periods for the penalty for murder for purposes of determining the proper imposable penalty, i.e., the intent of the framers of the Constitution was merely to consider the death penalty automatically reduced to reclusion perpetua. The same thing may be said as regards rape with homicide. The penalty of death provided under the governing law then was deemed reduced to reclusion perpetua; however, for purposes of determining the proper penalty because of the mitigating circumstance of minority, the penalty of death was still the penalty to be reckoned with. Thus, the proper imposable penalty of accused Campomanes should have been reclusion perpetua. In any event, this matter has been rendered moot by the passage of R.A. No. 7659, entitled An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for the Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and For Other Purposes.

WHEREFORE, the appealed decision in Criminal Case No. 129 of Branch 4 of the Regional Trial Court, Eighth Judicial Region, sitting in Dolores, Eastern Samar, is hereby REVERSED on ground of reasonable doubt, and

accused-appellants JACOB QUITORIO and JAYSON POMIDA are hereby ACQUITTED and their immediate release from detention is ORDERED, unless their further detention is warranted for any other lawful cause.

The Director of the Bureau of Corrections shall submit to this Court, within ten (10) days from receipt of a copy of this decision, a report on the release of the abovementioned accused-appellants.

Costs de officio.

SO ORDERED.

Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Original Record (OR), 1.

[2] Per Judge Feliciano C. Lozada, OR, 233-265; Rollo, 45-78. The decision, though, was dated 4 July 1994.

[3] Rollo, 208-211.

[4] Section 14(2), Article III, Constitution.

[5] Section 2, Rule 133, Rules of Court.

[6] *People v. Borneo*, 220 SCRA 557, 567[1993].

[7] *People v. Tiozon*, 198 SCRA 368, 381 [1991]; *People v. Alvero, Jr.*, 224 SCRA 16, 27 [1993]; *People v. Genobia*, 234 SCRA 699, 706 [1994].

[8] TSN, 28 July 1993, 13.

[9] *Id.*, 13-14.

[10] TSN, 28 July 1993, 5.

[11] *People v. Conde*, 322 Phil 757, 766 [1996] (citations omitted).

[12] Exhibit "1."

[13] TSN, 29 June 1993, 18-19.

[14] TSN, 30 June 1993, 6.

[15] *Id.*, 7.

[16] *Supra* note 12.

[17] TSN, 29 June 1993, 3.

[18] *Id.*, 13-14.

[19] TSN, 29 June 1993, 16-17.

[20] Section 3(m), Rule 131, Rules of Court.

[21] Exhibit "2."

[22] TSN, 30 June 1993, 23-24.

[23] TSN, 29 June 1993, 18.

[24] The evidence for the defense established, however, that there was no fluorescent lamp on or about the premises.

[25] TSN, 29 June 1993, 24-25.

[26] TSN, 30 June 1993, 8.

[27] Id., 27-28.

[28] TSN, 29 June 1993, 21.

[29] TSN, 30 June 1998, 8.

[30] TSN, 30 June 1998, 20-21.

[31] Id., 17.

[32] Id., 15.

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