PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO CAPILLO, AND ALFREDO CAPILLO JR. AND ALFREDO CAPILLO SR., ACCUSED-APPELLANTS.

G.R. No. 123059. November 25, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

The brothers Eduardo Capillo alias "Eddie" and Alfredo Capillo Jr. alias "Oniok," together with their father Alfredo Capillo Sr., were charged with Rape with Homicide committed against one Jonalyn Garnizo. It was alleged in the Information that the Capillos conspired in having sexual intercourse with the victim through force and that by reason or on the occasion thereof, taking advantage of their superior strength, and with treachery choked her to death.[1]

On 31 January 1995 the trial court found all three (3) accused guilty but only of rape. It sentenced each of them to reclusion perpetua[2] and ordered them, jointly and severally, to indemnify the heirs of Jonalyn Garnizo in the amount of P50,000.00.[3]

At around six-thirty in the evening of 1 September 1993 Lizaldo Songano while catching spiders along the feeder road in Sitio Tabay, Brgy. Cadagmayan Norte, Sta. Barbara, Iloilo, saw Jonalyn Garnizo, a fifteen (15)-year old classmate at the Sta. Barbara National Comprehensive High School, walking alone near a clump of bamboos. She was wearing her school uniform of blue skirt and white blouse. A few moments later, Lizaldo also saw his neighbors Alfredo Capillo Jr. and Eduardo Capillo emerge from the nearby cornfield they were tending for Atty. Virgilio Sindico, their landholder, and joined Jonalyn. Accused Alfredo Capillo Jr. walked on one side of Jonalyn and Eduardo Capillo on the other side.

Jerry Susbilla, who happened to be in the same area, was heading towards Sitio Tabuyog to hire a jeep to transport his finished bamboo furniture to Jaro, Iloilo City. While walking Jerry heard a woman moan twice. He followed the direction from where the sound came. Crawling towards a spot planted with shrubs and a tamarind tree, then squatting at a distance of approximately two (2) arms length from the feeder road, he saw a naked man copulating with a naked girl, while two (2) other men wearing shorts were holding the girl, one on the head and the other on the feet. Jerry readily recognized the girl as the place was adequately illumined by a full moon and he was only two (2) arms length from her. He knew Jonalyn as the daughter of Inten and Cecilia Garnizo residing in Sitio Tabay. He also recognized the three (3) men as those working and living in the land of Atty. Sindico. Horrified by what he saw, Jerry left the scene and went home to Brgy. Cadagmayan Norte and told no one, not even his wife, of what he saw.

Also, at around the same time in the evening of 1 September 1993, a certain William Songano was walking on the same feeder road on his way home. He heard the moaning of a woman from the direction of the tamarind tree. He quickened his pace. Suddenly a man emerged from beneath the tamarind tree. He offered liquor to William and tried to hold his arm. But William refused the offer and parried off the man's arm. Then William sensed that there

was another man behind him thus prompting him to draw his scythe. Both men withdrew and returned to the vicinity of the tamarind tree. William later identified in court the man who offered him liquor to be Alfredo Capillo Jr., and his companion, Eduardo Capillo.

At two forty-five in the afternoon of 2 September 1993 Barangay Councilman Manuel Canto radioed to the Sta. Barbara police station that a cadaver was found in Sitio Tabay. SPO3 Ludovico Solivio and some of his colleagues rushed to the scene. The body was identified to be that of Jonalyn Garnizo. She was lying on a grassy portion within the bamboo groves about fifteen (15) meters from the feeder road. She was fully clothed in her school uniform. SPO3 Solivio noted the absence of signs of physical struggle at the particular place where the body was found.

A pair of slippers was found near the tamarind tree twenty-five (25) meters across the road. SPO3 Solivio summoned the grandfather of Jonalyn and he identified the slippers as belonging to his granddaughter. Apparently a struggle took place there as SPO3 Solivio observed small twigs of plants broken with the ground disturbed.

Medico-Legal Officer Ricardo Jaboneta autopsied the body of Jonalyn in the morning of 3 September 1993 and found the following: Cyanosis, integuments and nailbeds. Hematoma: (1) 5.0 x 4.5 cms., right temple; (2) 2.0 x 4.0 cms., right parietal area. Lungs: markedly congested, voluminous, cripitous with multiple petechea. Cut sections showed marked congestion, interstitial hemorrhages and exuded sanguinous froth on pressure, moderate amount. Heart: congested, normal size, covered with small amount of fatty tissues. Ventricular chambers: almost empty. Coronary arteries: patent. Spleen: contracted. Brain and other visceral organs: markedly congested. Stomach: empty. Genital examination: fourchette, presence of fresh abrasion, surrounding mucusa stained with dried clotted blood. Hymen showed complete fresh laceration at 3:00 o'clock position; edges, raw. Cause of death: asphyxia by choking. Remarks: (1) Body, previously embalmed, broken dried leaves taken from buttocks and vulva. (2) Vaginal smear, positive for the presence of disintegrated sperm cell.[4]

On 10 September 1993 Jerry Susbilla attended the wake for Jonalyn at her residence. He saw the victim's mother seated on the stairs, crying. He asked her about the progress of the case. She replied that her family could not get justice since nobody would come out in the open to shed light on the matter. Taking pity on her, he revealed to her what he knew about the incident and volunteered to testify. He went with her to the police station in Sta. Barbara and later to the NBI office in Iloilo City where he gave a sworn statement.

In open court Jerry Susbilla identified the perpetrators of the crime: Alfredo Capillo Jr. as the one who copulated with Jonalyn; Alfredo Capillo Sr. as the one who held her head; and Eduardo Capillo as the one who suppressed the movement of her feet while the rape was being committed by Alfredo Capillo Jr.

On the other hand the three (3) accused contended that at the time of the incident they were at home around 330 meters away from the crime scene and had their alibi corroborated by Eduardo Capillo's wife Felisa and their counsel Atty. Virgilio Sindico.

In finding that all three (3) accused conspired in the commission of rape, the trial court relied primarily on the testimony of Jerry Susbilla that he saw Alfredo Jr. raping Jonalyn while her head and feet were being held by Alfredo Sr. and Eduardo Capillo, respectively, as strengthened by the postmortem finding that she had sexual intercourse before she was killed. Secondarily, the trial court sustained the testimonies of Lizaldo and William regarding the presence of the Capillos near the scene of the crime on the date and at the time of the incident and brushed aside the alibi of the accused. It found that there was no physical impossibility for them to be at the crime scene at the particular date and time; consequently it held them equally liable but only for rape inasmuch as the prosecution failed to present any evidence that one or all of them choked Jonalyn to death. This finding indeed was tantamount to the acquittal of the accused of the charge of homicide which we cannot now reverse on appeal.

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Hence, our review of this case is confined to the conviction of the accused for rape.

Accused-appellants assert that since the body of Jonalyn was discovered dressed in school uniform within the bamboo groves, and not naked beneath the tamarind tree where Jerry allegedly witnessed the sexual assault, the crime of rape was committed therein by other persons and not by them. Accused-appellants assail as incredible the testimonies of Jerry Susbilla and William Songano that at six-thirty in the evening of 1 September 1993 they both heard the moaning of a woman coming from the same tamarind tree. Accused-appellants theorize that if this were so, then Jerry and William would have certainly met each other on the feeder road. They also dispute their identification by Jerry because the tamarind tree was surrounded by thick vegetation as shown in the picture marked Exh. "9-A"[5] and at six-thirty that evening faces could no longer be recognized due to darkness. Lastly, they submit that Jerry's belated revelation of his knowledge of the crime to the mother of the victim and then to the police should adversely affect his credibility.

Accused-appellants Alfredo Capillo Jr., Eduardo Capillo and Alfredo Capillo Sr. were properly found guilty by the trial court of raping Jonalyn Garnizo. Jerry Susbilla's response to the moaning sound he heard provided him an opportunity to view the essence of the criminal act and the precise roles played by the three (3) malefactors. The natural tendency of a witness would be to strive to observe the manner of the perpetration of the crime and to look at the appearance of the perpetrator.[6] And the startling or frightful experience creates an indelible impression in the mind that can be vividly recalled.[7] Consider the recollection of Jerry -

> Q:
>
> Now Mr. Witness, while you were walking that night at Brgy. Tabay going to Sitio Tabuyog, could you tell us what happened on the way? x x x x
>
> A:
>
> I saw that a woman was being raped by one (1) person, but there were three (3) of them x x x x
>
> A:
>
> Because I saw the one having sexual intercourse with the woman while one was holding the head and one was holding the hand (sic).
>
> Q:
>
> My question is how do you know this incident of rape?
>
> A:
>
> Because I saw it.
>
> Q:
>
> Now, Mr. Witness, what did you actually see, could you explain to the Honorable Court x x x x
>
> A:
>
> I saw three persons raping the girl and I saw the one person naked while the other person was holding the feet and the other one is holding the head.
>
> Q:
>
> That person who was naked, what was he doing at that time when you saw him?
>
> A:

He was having sexual intercourse with the girl x x x x

Q:

What was the position of the man that was naked while having sexual intercourse with the woman who was also naked?

A:

He was on top of the naked . . . the naked man was on top of the naked girl.

Q:

Were you able to recognize that person who was naked having sexual intercourse with the woman who was also naked x x x x

A:

I know.

Q:

How were you able to identify him?

A:

I saw him he raped because of the face . . . from the face.

Q:

At that time when you saw the incident, did you know his name?

A:

No, only the face.

Q:

And Mr. Witness, later, were you able to know his name?

A:

I know.

Q:

When for the first time did you know his name?

A: My friends.

Q:

Who (sic) was his name?

Court: Please specify your question.

Q:

You said you were able to know the person who raped later, who (sic) was the name of that person?

A:

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They call him Oniok.

Q:

This Oniok, do you know his real name?

A:

Yes, Ma'am.

Q:

Who (sic)?

A:

Eduardo Capillo x x x x

Q:

Tell us again who (sic) was the name of the person Oniok, what is his real name?

A:

Alfredo Capillo.

Q:

Now, this Alfredo Capillo, alias Oniok, which (sic) you said you knew later, who was the one responsible for raping the girl, could you point him to the Honorable Court if he is here inside the court room?

Atty. Sindico: I would like to make of record, Your Honor, that this witness said at first that the name is Eduardo, and later, he changed it to Alfredo.

Interpreter: Witness is pointing to a person who when asked answered to the name of Alfredo Capillo, alias Oniok.

Court: There are three accused here, Alfredo Capillo, Jr., Alfredo Capillo, Sr. and Eduardo Capillo. Who (sic) was his name before, because he said Eduardo. Who (sic) is his name?

A:

Alfredo Capillo, Jr. x x x x

Q:

Mr. Witness, that person whom you pointed before as Alfredo Capillo, Jr., alias Oniok, he is the same person whom you said before you recognized to have raped the girl on September 1, 1993 at about 6:30 in the evening?

A:

Yes, Ma'am.

Q:

Now, Mr. Witness, you said you saw three persons aside from the accused, Alfredo Capillo, Jr., alias Oniok, you said you saw the other two persons; now, the one holding the legs of the woman, were you able to recognize that person holding the legs of the woman while Alfredo Capillo, Jr., alias Oniok, was having sexual intercourse with the woman? x x x x

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A:

I know him by face, the one holding the legs x x x x

Q:

Later, did you know also the name of the person holding the legs of the woman while the other man was having sexual intercourse with her? x x x x

A:

Eduardo.

Q:

The family name?

A:

Capillo.

Q:

Now, how were you able to know again that he was Eduardo Capillo, the person who was holding the legs of the woman?

A:

I knew his name at the Municipal Hall of Sta. Barbara.

Q:

Who told you his name at the Municipal Hall of Sta. Barbara?

A:

My friend.

Q:

By the way, this Eduardo Capillo whom you said you knew later the name when you recognized that evening of September 1, 1993 holding the legs of the woman while Alfredo Capillo, Jr. was raping the girl, is he here also present inside the court room?

A:

He is inside x x x x

Interpreter: Witness is pointing to a person who when asked answered to the name of Eduardo Capillo.

Q:

Now, how about the other 3rd person whom you said who was holding the head of the girl that night of September 1, 1993, while the other was raping her, and the other person was holding her legs, were you able also to recognize him?

A:

Yes, Ma'am x x x x Because I know him by face and name.

Q:

Who (sic) is his name?

A:

Alfredo Capillo x x x x

Interpreter: Witness came down from witness stand and went pointing and touching to the person who when asked answered to the name of Alfredo Capillo, Sr.

Q:

Mr. Witness, that person whom you pointed, is the same person whom you recognized that evening who was holding the head of the woman while the other person was raping and the other one was holding the legs?

A:

Yes, Ma'am.

Q:

How far were you at the place where you saw the woman being raped by one man and the other two holding the head and the legs of the woman?

A:

Two (2) arms length.

Q:

Mr. Witness, how far is this place of the incident to the barangay road of Sitio Tabay which you said you passed by that night?

A:

About two (2) arms length from the place of the incident to the road where I was traversing.

Q:

And for how many minutes did you stay at the place where you were at that time looking at the three accused doing the act?

A:

I do not know how many minutes I stayed there.

Q:

Now, by the way, that woman whom you said was naked being raped, were you able to recognize that woman?

A:

Yes, Ma'am.

Q:

Do you know her parents?

A:

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I know her father and her mother.

Q:

Who was (sic) her parents?

A:

The mother is Cecilia.

Q:

The family name?

A:

Garnizo.

Q:

How about the father?

A:

I know the father was called Inten in our place.

Q:

Do you know the name of that girl? x x x x

A:

Jonalyn.

Q:

How about the family name?

A:

Garnizo x x x x[8]

Q:

What was your position when you said you were looking at the three (3) persons raping the girl, the one was holding the feet and the other person was holding the head when you said you were two (2) arms length away?

Interpreter: Witness is demonstrating his position by squatting with his two (2) hands laid on the ground x x x x[9]

To sum up, while Jerry was in a squatting position approximately two (2) arms length between the feeder road and the crime scene, Jerry saw the commission of rape near the tamarind tree and recognized the victim and her attackers. The naked Alfredo Jr. was on top and engaged in actual sexual intercourse with the similarly naked Jonalyn, while Alfredo Sr. and Eduardo, both wearing shorts, were holding her head and feet, respectively. The full moon aided Jerry in identifying them. Afterwards, he went home. He was no longer in his proper senses and kept the matter to himself, i.e., until the sight of Jonalyn's mother weeping, thinking perhaps that nobody would help her family attain justice, served as a catalyst that restored his cerebral equilibrium and emboldened him to reveal what he had witnessed on the night of 1 September 1993.

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Jerry's testimony was assessed by the trial court to be credible. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected[10] for it had the opportunity to observe the conduct and demeanor of Jerry while testifying[11] and detect if he was lying.[12] It was an opportunity not equally enjoyed by appellate tribunals.[13] No cogent reason exists to deviate from the findings of the trial court.

The circumstance that Jonalyn experienced sexual intercourse was corroborated by the finding of the physician that her hymen showed a complete fresh laceration at 3:00 o'clock position and that her vaginal smear was positive for the presence of disintegrated sperm cell. Moreover, the circumstance that the crime was committed near the tamarind tree was corroborated by SPO3 Solivio when he found broken small twigs and disturbed ground showing that a struggle had indeed taken place on that very spot. Although of lesser significance, Lizaldo Songano testified having seen Eduardo and Alfredo Jr. emerge from the cornfield and join Jonalyn in walking near the crime scene, and William Songano affirming the presence of the Capillos in the same vicinity.

We find untenable the alibi as well as the arguments presented by accused-appellants. The circumstance that the body of Jonalyn was discovered dressed in school uniform within the bamboo groves does not lead to the conclusion that rape was committed in that particular place and by persons other than accused-appellants. Rather, we agree with the trial court that "[i]t is most probable that after the sexual assault and the victim died as a result of choking, the accused herein put on her clothes and bodily brought her across the road to conceal their misdeed x x x x"[14]

Neither Jerry nor William mentioned having seen each other on the feeder road although both claimed presence thereat around six-thirty in the evening of 1 September 1993. The time, of course, could merely be an estimate.

The picture marked Exh. "9-A" does not support the claim that thick vegetation surrounded the tamarind tree because captured therein was merely the area along the feeder road. We note that the crime occurred about two (2) arms length from there. Moreover, Jerry testified that it was not dark on the night of the incident because there was a full moon.[15] The trial court took judicial notice of the moon rising at ten thirty-three in the morning of 1 September 1993. The fullness of its phase provided a natural illumination that facilitated the identification by Jerry of Jonalyn and accused-appellants. Where conditions of visibility are favorable and the witness does not appear to be biased his assertion as to the identity of the malefactor should be accepted as trustworthy.[16] It matters little that initially Jerry did not know the names of accused-appellants for as long as he recognized their faces[17]and identified them individually in open court.

There is no standard behavior for a person confronted with a shocking incident - one may immediately report the incident to the proper authorities while others, for fear of involvement in a criminal investigation, may keep to themselves what they had seen.[18] Still, others break their silence only later as did Jerry. But such delay of a witness in reporting to the police authorities the crime he had witnessed, when adequately explained, does not impair his credibility; neither will it render his testimony biased nor destroy its probative value.[19] It is not a common experience for a person to witness the perpetration of an atrocious crime and the shocking experience will usually distort his normal pattern of reaction.[20] In the present case, not knowing what to do as he became disoriented after witnessing the incident, is a sufficient justification for Jerry's momentary silence. Moreover, his initial decision to remain tight-lipped lasted for a short span[21] of nine (9) days, proving after all that civic mindedness was not dead.[22] And the aforementioned number of days was indeed negligible compared to our ruling in one case that even if it took the eyewitness three (3) years to overcome his fear and decide to reveal what he had actually seen during the commission of the crime his credibility was not thereby impaired.[23]

Conspiracy was correctly appreciated by the trial court. While Alfredo Jr. was sexually assaulting Jonalyn,

Alfredo Sr. held her head and Eduardo her feet. These collective acts showed the existence of a common design toward the accomplishment of a united purpose,[24] thus making the act of one the act of all.[25]

Alibi is a negative and self-serving evidence undeserving of weight in law. Accused-appellants failed to establish that it was physically impossible for them to be at the scene of the crime at the time of its commission.[26] More importantly, it yields to positive identification and absence of ill motive on the part of witness Jerry Susbilla.[27]

The trial court correctly awarded indemnity of P50,000.00 in favor of the heirs of the raped victim. This is automatically imposed upon the accused without need of proof other than the fact of the commission of the offense. But in addition, the trial court should have awarded moral damages which are similarly imposed in rape cases without further proof, in conformity with recent jurisprudence.[28]

WHEREFORE, the Decision appealed from finding accused-appellants Eduardo Capillo, Alfredo Capillo Jr. and Alfredo Capillo Sr. guilty of rape and sentencing each of them to reclusion perpetua and ordering them jointly and severally to pay the heirs of Jonalyn Garnizo P50,000.00 as indemnity is AFFIRMED, with the MODIFICATION that, in addition, accused-appellants are directed jointly and severally to pay the same heirs of Jonalyn Garnizo another P50,000.00 for moral damages, and to pay the costs.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Information dated 16 November 1993; Rollo, p. 15.

[2] Art. 335 of the Revised Penal Code as amended by Sec. 11 of R. A. No. 7659.

[3] Decision penned by Judge David A. Alfeche Jr., RTC-Br. 38, Iloilo City; Rollo, p. 50.

[4] Exh. "B;" Records, Vol. I, p. 9.

[5] Records, Vol. I, p. 607.

[6] People v. Bajar, G. R. No. 118240, 28 October 1997, 281 SCRA 262.

[7] People v. De Guia, G. R. No. 123172, 2 October 1997, 280 SCRA 141.

[8] Id., pp. 17-20.

[9] Id., p. 24.

[10] People v. Ramirez, G. R. No. 97920, 20 January 1997, 266 SCRA 335.

[11] Lustan v. Court of Appeals, G. R. No. 111924, 27 January 1997, 266 SCRA 663.

[12] People v. Dinglasan, G. R. No. 101312, 28 January 1997, 267 SCRA 26.

[13] Rabaja v. Court of Appeals, G. R. No. 125616, 8 October 1997, 280 SCRA 290.

[14] Rollo, p. 42.

[15] TSN, 8 April 1994, p. 37.

[16] People v. Martinez, G. R. No. 116918, 19 June 1997, 274 SCRA 259.

[17] People v. Evangelista, G. R. No. 121627, 17 November 1997, 282 SCRA 37; People v. Vasquez, G. R. No.

105008, 23 October 1997, 281 SCRA 123.

[18] People v. Navales, G. R. No. 112977, 23 January 1997, 266 SCRA 569.

[19] People v. Padao, G. R. No. 104400, 28 January 1997, 267 SCRA 64; People v. Herbieto, G. R. No. 103611, 13 March 1997, 269 SCRA 472.

[20] People v. Alvarado, G. R. No. 117402, 21 July 1997, 275 SCRA 727.

[21] People v. Queliza, G. R. No. 124135, 15 September 1997, 279 SCRA 145.

[22] People v. Macoy, G. R. Nos. 96649-50, 1 July 1997, 275 SCRA 1.

[23] People v. Apongan, G. R. No. 112369, 4 April 1997, 270 SCRA 713.

[24] Subayco v. Sandiganbayan, G. R. Nos. 117267-117310, 22 August 1996, 260 SCRA 798.

[25] People v. Herbias, G. R. Nos. 112716-17, 16 December 1996, 265 SCRA 571.

[26] People v. Taton, G. R. Nos. 122757-61, 28 November 1997, 282 SCRA 300.

[27] People v. Javier, G. R. No. 84449, 4 March 1997, 269 SCRA 181; People v. Letigio, G. R. No. 112968, 13 February 1997, 268 SCRA 227.

[28] People v. Caballes, G.R. Nos. 102723-24, 19 June 1997, 274 SCRA 83. See also People v. Calayca, G.R. No. 121212, 20 January 1999.

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