

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JURRY ANDAL Y MERCADO RICARDO ANDAL Y MERCADO, AND EDWIN MENDOZA, ACCUSED-APPELLANTS.

G.R. No. 124933. September 25, 1997

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PER CURIAM:

By automatic review, we pass upon another imposition of the death penalty. Accused-appellants Jurry Andal, Ricardo Andal, and Edwin Mendoza seek reversal of the judgment of Branch 5 of the Regional Trial Court of the Fourth Judicial Region stationed in Lemery, Batangas, relying on the defense of denial and alibi. After taking great pains in reviewing even the minutest of the details of the case at bench, we are compelled by the evidence on record to affirm.

Accused-appellants were initially charged under two separate Informations docketed as Criminal Cases No. 148-94 and 149-94, for the crimes of Rape with Homicide, and Robbery, respectively, reading as follows:

Criminal Case No. 148-94

The undersigned Special Counsel accuses Jurry Andal y Mercado, Ricardo Andal y Mercado alias “Ric” and Edwin Mendoza of the crime of rape with Homicide, defined and penalized under Articles 335 and 249 in relation to Article 46 of the Revised Penal Code, committed as follows:

That on or about the 6[th] day of July, 1994, at about 7:00 o’clock in the morning, at Barangay Mahabang Parang, Municipality of San Luis, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together acting in common accord and mutually helping one another, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously deliver fist blow on the stomach of the victim, Nancy Siscar, which render her unconscious, thereafter, with lewd and unchaste designs, wilfully, unlawfully and feloniously lie with and have carnal knowledge of her one after the other against her will and consent, and thereafter, willfully, unlawfully and feloniously strangle with her own half slip which caused her instantaneous death.

Contrary to law.

(p.7, Rollo.)

Criminal Case No. 149-94

The undersigned Special Counsel accuses Jurry Andal y Mercado, Ricardo Andal y Mercado alias “Ric” and Edwin Mendoza y Villanueva alias “Eddie” of the crime of Robbery, defined and penalized under Article 294 of the Revised Penal Code, committed as follows:

That on or about the 6[th] day of July, 1994, at about 7:00 o’clock in the morning, at Barangay Mahabang Parang, Municipality of San Luis, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, acting in common accord and mutually helping one another, with intent of gain, by means of force, violence and intimidation, did then

and there willfully, and feloniously take, steal and carry away the following, to wit: wrist watch worth One Thousand Pesos (P 1,000.00); earrings worth One Thousand Pesos (P 1,000.00); and cash worth One Thousand Seven Hundred Fifty Pesos (P 1,750.00), belonging to one Nancy Siscar, with a total value of Four Thousand Seven Hundred Fifty Pesos (P4,750.00), Philippine Currency, to the damage and prejudice of the said owner thereof in the aforementioned amount.

Contrary to law.

(pp. 9-10, Rollo.)

Upon agreement of the prosecution and the defense, the two cases were consolidated.

Accused-appellant having denied both charges, a joint trial on the merits was undertaken, following which, a judgment of conviction was rendered, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, JURRY ANDAL Y MERCADO, RICARDO ANDAL Y MERCADO and EDWIN MENDOZA are found guilty by proof beyond reasonable doubt of the crime of RAPE WITH HOMICIDE and penalized in accordance with R.A. No. 7659 (Death Penalty Law) Sec. 11, par. A classifying this offense as one of the heinous crimes and hereby sentences each of them to suffer the penalty of DEATH; to indemnify jointly and severally the family of NANCY SISCAR the amount of P 50,000.00 for the death of NANCY SISCAR and P 74,470.50 as actual burial and incidental expenses. The incidental expenses and P 200,000.00 as moral damages. The Court finds them guilty of robbery as charged on the information and sentences them to suffer the indeterminate sentence of TEN (10) YEARS of Prison Mayor as minimum to SEVENTEEN(17) YEARS of Reclusion Temporal as Maximum.

(p. 52, Rollo.)

The inculpatory facts, as supported by the evidence, were synthesized by the office of the Solicitor General in this wise:

On July 4, 1994, the victim, Nancy R. Siscar, a 22- year old elementary school teacher, was scheduled to report to her new assignment at Mahabang Parang Elementary School situated in Barangay Mahabang Parang, Municipality of San Luis, Batangas (p.36, TSN, Sept. 1, 1995). As it was Nancy's first day to report, her mother, Nenita Siscar, accompanied her to school (p. 37, *ibid.*). While the two (2) were walking on their way to Mahabang Parang Elementary School at about 8:00 to 9:00 o'clock in the morning, three (3) men standing along the Barangay road, later identified as appellants Jurry Andal, Ricardo Andal and Edwin Mendoza, whistled several times at the victim (pp. 37-38, *ibid.*). They also laughed mockingly at them (pp. 38-40, TSN, Sept. 1, 1995).

On July 6, 1994, between the hours of 6:00 and 7:00 o'clock in the morning, witness Olimpio Corrales was at the Barangay road of Mahabang Parang (p.9, TSN, Feb. 10, 1993). He just came from the farm he was tilling and was on his way home (p. 9, *ibid.*). While he was walking, he saw the three (3) appellants, Jurry Andal, Ricardo Andal and Edwin Mendoza, standing along the Barangay road of Mahabang Parang (pp. 5-9, *ibid.*).

The victim came along, on her way to the Mahabang Parang Elementary School (p. 9, TSN, Feb. 10, 1995). Appellants Jurry Andal hit her on the abdomen (p. 9, TSN, *ibid.*). As a result, she fell on her back (p. 10, *ibid.*). Appellant Jurry Andal then hoisted her on his shoulder and carried her to the forest (gubat) (pp. 14, 19, *ibid.*). The other appellants, Ricardo Andal and Edwin Mendoza, hurriedly picked up the bag, shoes and other personal belongings of the victim (p. 20, *ibid.*) and also proceeded to the forest (p. 20, *ibid.*).

Corrales immediately ran to his house at Barangay Banoyo (pp. 20-21, *tsn*, Feb. 10, 1995).

Later, on the same day, the three (3) appellants came to the residence of Corrales and threatened him not to tell anyone what he witnessed; otherwise, they would kill him (p. 24, TSN, *ibid.*).

When the Philippine National Police of San Luis, Batangas received a report about a lifeless body found in the creek at the boundary of Barangays Banoyo and Mahabang Parang, then Policy Senior Inspector Amelia Amando Madero, together with SPO2 Lolito Dinglasan, SPO2 Dante Dawis, and SPO3 Ronald Macatangay, immediately proceeded to the place (pp. 5-6, TSN, Sept. 1, 1995). Thereat, they found the lifeless and nude body of a woman who was later identified by both the Barangay Captain and the Uncle of the victim as that of Nancy Siscar (p. 7, TSN, Sept. 1, 1995; p. 4, TSN, Aug. 4, 1995). The victim was lying on the ground on her belly (p. 7, TSN, Sept. 1, 1995). When the victim was turned, her eyes were full of worms and she was already in the early stage of decomposition (p. 8, *ibid.*). Her half-slip had been twisted like a rope and tied tightly around her neck (p. 9, *ibid.*; p. 7, TSN, Aug. 4, 1995). Scattered beside her were her shoes, umbrella, bag, pack lunch and school notebooks (pp. 7-9, TSN, Sept. 1, 1995).

The police officers also discovered that a wristwatch, earrings and money amounting to P 2,000.00 were missing (p. 9, TSN, Aug. 4, 1995). The mother of the victim confirmed that her daughter was wearing her wristwatch, earring and had cash when the crime was committed (pp. 43-46, TSN, Sept. 1, 1995). The total amount of the lost items, including the cash, was P5,000.00 (p. 10, TSN, Aug. 4, 1995). The other personal belongings found near the body of the victim were identified by the mother of the victim as belonging to her daughter (pp. 9-10, TSN, Sept. 1, 1995).

Dr. Antonio Ventido y Salcedo, NBI Medico-Legal Officer, performed the autopsy on the body of the victim (p. 28, TSN, Aug. 4, 1995). He found that the victim was sexually abused by more than one person (p. 36, TSN, Aug. 4, 1995). He confirmed the presence of spermatozoa on the vaginal canal of the victim (p. 36, TSN, Aug. 4, 1995). He issued a postmortem certificate attributing the victim's death to "asphyxia by strangulation" (Exhibit F).

On July 18, 1994, but about 11:00 o'clock in the evening, witness Corrales gave his written statements to SPO3 Romulo Mercado at Camp General Miguel C. Malvar, Batangas City, in the presence of Chief Inspector Manuel M. Kalalo (Exhibit A). In his statement, he narrated what the three (3) appellants did on the fateful day of July 6, 1994 (*ibid.*).

Forthwith, or on July 20, 1994, cases of Rape with Homicide and Robbery were filed before the Municipal Trial Court of San Luis, Batangas (pp. 26-31, TSN, Feb. 10, 1995). After the preliminary investigation had been conducted, a warrant of arrest was issued against the three appellants (pp. 26-31, *ibid.*). When appellants were arrested and brought to the Police Station of San Luis, Batangas, SPO2 Lolito Dinglasan was ordered by the Police Senior Inspector to search the suspects for any dangerous weapons (pp. 21-22, TSN, Sept. 1, 1994). Found inside the pocket of appellant Jurry Andal the half of an earring (p. 22, TSN Sept. 1, 1994) which was identified by the victim's mother as the one she gave to her daughter and worn by her on July 6, 1994 (pp. 43-44, TSN, Sept 1, 1995).

Witness Nenita Siscar presented the list of expenses amounting to P 74,470.50 incurred in connection with the death of her daughter (Exhibit L).

(pp. 3-8, Appellee's Brief. Ff. p. 157, Rollo.)

In defense, accused-appellants plead denial and alibi. All three accused-appellants denied: (a) whistling and mockingly laughing at Nancy Siscar and her mother; (b) the punching of Nancy Siscar's stomach by Jurry Andal which caused Nancy to fall on her back, the carrying off of Nancy Siscar to the forest where she was relentlessly raped and killed; and (c) threatening Olimpio Corrales, Eyewitness to the aforesaid punching incident, brother-in-law of Jurry Andal and Ricardo Andal, and barrio-mate of Edwin Mendoza.

Jurry Andal asserts that he was at his residence between 6 and 7 o'clock in the morning of July 6, 1994, and that he left his house only at 11 o'clock that morning to tend to his cow. He also argues that the earring which was taken from his right ear (not from his pocket) by SPO2 Lolito Dinglasan was given to him seven years before by

his sister-in-law, Marcianita Andal. He presented three photographs to prove that he was wearing said earring on three occasions. As regards Olimpio Corrales' testimony implicating him in the crimes charged, Jurry stated that Olimpio was angry at him. He referred three incidents to prove this: (a) Olimpio allegedly threatened him, saying "May araw ka rin sa akin", after Jurry blamed Olimpio for having frightened Jurry's cow; (b) Olimpio again threatening Jurry ("May araw ka rin sa akin") following an incident where water from Jurry's "dampa" passed through Olimpio's ampalaya garden; (c) Olimpio's resentment against Jurry for having mentioned that Olimpio's house is the nearest to the crime scene, thus impliedly referring to him as the culprit in the commission of the crimes.

Ricardo Andal argues that between 6 and 7 o'clock on the morning of July 6, 1994, he was at his residence looking after his child and waiting for the rain to stop. At 9 o'clock, he tended to his two cows in Barangay Banoyo and returned home at 10 o'clock in the morning on the same date. On Olimpio's testimony, Ricardo insist that Olimpio implicated him and the two other accused-appellants because they pointed to him as the one whose residence is nearest to the crime scene, mistaking the same as shifting to him the suspicion for commission of the crimes.

Edwin Mendoza asserts that the night before July 6, 1994, he slept at the house of one Carling Gaa, and that the following morning, he went to the construction site where he was working and did not leave said place the whole day. It is also averred that there was no grudge between him and Olimpio. Carling Gaa was, however, not presented to corroborate Edwin Mendoza's testimony.

From the evidence, the trial court deduced the following undisputed facts:

Nancy Siscar was brutally raped and killed on the morning of July 6, 1994 at Barangay Banoyo, San Luis, Batangas. Her jewelry and money were stolen by her assailants. The fact of rape is evidence by laceration found in her vagina during the medical examination, as well as the presence of human spermatozoa in her vaginal canal.

Upon observing the demeanor of prosecution witness Olimpio Corrales, the trial court was convinced that he spoke the truth-

The prosecution was able to prove that between the hours of 6:00 and 7:00 in the morning of July 6, 1994, while NANCY SISCAR was walking in Barangay Banoyo, San Luis, Batangas on her way to Mahabang Parang Elementary School, accused JURRY ANDAL, RICARDO ANDAL and EDWIN MENDOZA suddenly appeared on front of NANCY SISCAR. JURRY ANDAL immediately boxed the stomach of the victim who fell down, lifted her and carried her to the forest. RICARDO ANDAL and EDWIN MENDOZA picked up the things of the victim and followed them in the forest. After committing the gruesome crime, the three (3) accused proceeded to the residence of star witness OLIMPIO CORALES and threatened him not to tell anybody what he saw that morning or else he would be killed. (pp. 49-50, Rollo.)

The trial court ruled that the circumstantial evidence adduced is sufficient to prove the crimes charged taking into consideration the credibility of the prosecution's star witness Olimpio Corrales and the absence of a valid reason for him to falsely testify against accused- appellants of such grave offenses as rape with homicide and robbery.

On accused-appellants' defense of alibi, the trial court found that all three failed miserably in proving that it was impossible for them to have been at the crime scene at the time of the offenses were perpetrated since all three accused-appellants' supposed places of refuge are located in the same Barangay Banoyo, where the crimes were committed.

The trial court likewise held that accused - appellants acted in concert to rape, slay, and rob the victim.

With full moral conviction, the trial court imposed the penalty of death in accordance with Section 11 of Republic Act No. 7659 which provides that "...when by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death."

Hence, the instant appeal and review.

In discussing their six assigned errors, accused-appellants contended that Olimpio Corrales is not a credible witness since he did not actually witness the commission of the offenses charged. He is said to have twice denied knowledge of said crimes during the first two police investigations and waited 12 days before denouncing accused-appellants as the perpetrators. His testimony is also described as conflicting, inconsistent, and evasive on "vital points".

Accused-appellants rely on the fact that an alleged eyewitness, Alfredo Amoguis, who executed a Sworn Statements which became the basis for the filing of the Information in court was not presented during the trial, insisting that this gives rise to the presumption that the prosecution willfully suppressed evidence.

It also contended that the earring obtained from Jurry Andal is inadmissible in evidence because it is the product of an unreasonable and illegal search and seizure as the police officer who procured the same was not clothed with a search warrant. Further, it is argued that there was a violation of accused-appellants' constitutional right to counsel since they were arrested, detained, and investigated without the assistance of counsel.

Accused-appellants reiterate their defense of alibi, stating that the trial court shifted the onus probandi to the defense.

Lastly, accused-appellants assail the trial court's decision on the basis of such technicalities as it being unsigned and for being incomplete, for a want of a statement of facts which could support the trial court's finding of conspiracy.

We are not persuaded.

Circumstantial evidence is that which indirectly proves a fact in issue. The fact-finder must draw an inference from such evidence. It is at times essential to resort to circumstantial evidence since on direct testimony would, in many cases, result in setting felons free and deny proper protection to the community (*People v. Ramos*, 240 SCRA 191 [1995]). An accused can be convicted based on circumstantial evidence where the circumstances constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused to the exclusion of all others as the guilty person (*People v. Lorenzo*, 240 SCRA 624 [1995]). Circumstantial evidence is sufficient to support a 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 conviction a beyond reasonable doubt (*People v. Tabao*, 240 SCRA 758 [1995]).

In previous decisions, this Court had the opportunity to discuss the intrinsic nature of a rape case as that which involves only two parties, the rapist and the victim, thus making it difficult for the accused to disprove (*People v. Tacipit*, 242 SCRA 241 [1995]). Conviction or acquittal virtually depends entirely on the credibility of the victim's testimony because of the fact that usually only the participants can testify to its occurrence (*People v. Ching*, 240 SCRA 267 [1995]). Unfortunately in the case at bench, we do not have the facility of having the victim's testimony. She did not survive the cruelty of her assailants. Hence, the prosecution had to rely on the testimony of its witness, Olimpio Corrales.

In this regard, we agree with the trial court's finding that Olimpio Corrales' testimony, despite rigorous cross examination and careful perusal by the trial court, hurdles and musters any test of credibility. Although the trial

court was admittedly in the best position to assess the credibility of Olimpio Corrales, having had the opportunity to observe his demeanor on the witness stand (People v. Dolar, 231 SCRA 414 [1994]; People v. Cabalhin, 231 SCRA 486 [1994]), we still took the pains of examining his transcribed testimony and observed his spontaneity and frankness, his obvious fear and anxiety notwithstanding.

The testimony of Olimpio Corrales, Nenita Siscar, mother of the victim, Amelia Maderazo, the senior police inspector, and Dr. Antonio Vertido, the Medico-Legal officer, spawn and generate the following facts that constitute an unbroken chain of events leading to the inevitable conclusion of guilt on the part of accused-appellants, to wit:

1. On July 4, 1994, Nancy Siscar together with her mother, Menita, were walking to school between 8 and 9 o'clock in the morning. Three men, standing along the Barangay road, wolf-whistled several times at Nancy and laughed mockingly at both mother and daughter. Nenita Siscar the saw the three men's faces. With the help of Olimpio Corrales, she later identified them as Jurry Andal, Ricardo Andal, and Edwin Mendoza. (TSN, pp. 36-40, Sept. 1, 1995).
2. On July 6, 1994, between 6 and 7 o'clock in the morning, Olimpio Corrales was on his way home from the farm he was tilling. While walking along the Barangay road, he saw the three accused-appellants standing along the road. He was only three meters away from them (p.15. Records). Nancy Siscar then came along with her way to school. Jurry Andal suddenly approached her and hit her on the abdomen. Nancy fell backwards on the ground. Jurry Andal hoisted her on his shoulder and carried her to the forest. The other accused-appellants hurriedly picked-up Nancy's bag, shoes, and other belongings, and followed Jurry Andal to the forest (tsn, pp. 5-20, Feb. 10, 1993).
3. Upon seeing the above stated incident, Olimpio ran to his house full of fear. A short while later, at around 8 o'clock, accused-appellants came to Olimpio's house and threatened him with death should tell anyone about what he had witnessed (tsn, pp. 20-21, 24, Feb. 10, 1995).
4. The Philippine National Police of San Luis, Batangas then received a report about a lifeless body in the creek at the boundary of Barangay Banoyo and Mahabang Parang. Police Senior Inspector Amelia Amando Maderazo, together with SPO2 Lolito Dinglasan, SPO2 Dante Dawis, and SPO3 Ronald Macatangay, immediately proceeded to the place. There they found the lifeless and nude body of a woman at 11:30 p.m. on July 6, 1994. The body was later identified as that of Nancy Siscar. She was lying face down on the ground. When her body was turned, her eyes were full of worms and she was already in the early stage of decomposition. Further, her half-slip had been twisted or wound up like a rope and tied tightly around her neck. Scattered beside her were her shoes, umbrella, bag, and other personal belongings (tsn, pp. 5-7, Sept. 1, 1995).
5. The postmortem examination of the body of Nancy Siscar revealed that she had been sexually abused (p. 9, Records; tsn, pp. 30-36, Aug. 4, 1995).

All the aforesaid circumstances have been proven and established. The combination of such circumstances is sufficient to prove accused-appellants' guilt beyond reasonable doubt.

To discredit the testimony of Olimpio, accused-appellants rely on his 12-day delay in denouncing the three of them to the police authorities as the perpetrators of the crimes charge. This argument has no leg to stand on.

We have consistently ruled that a suspect in a crime need not be named by a witness in a hurried manner. Delay or vacillation in making a criminal accusation does not necessarily adulterate the credibility of a witness (People v. Plasencia, 249 SCRA 674 [1995]). The initial reluctance of witness to volunteer information about a criminal case and their unwillingness to be involved in criminal investigations due to fear of reprisal are common and have been

judicially declared not to affect credibility (*People v. Pacapac*, 248 SCRA 77 [1995]).

Olimpio Corrales, an unlettered man, is related by affinity to the brothers Jurry and Ricardo Andal, his wife being the sister of the brothers Andal. Olimpio's testimony greatly displayed that Jurry Andal, who was four years his senior and whom he called "Manong Jurry", had apparent moral ascendancy over him. Several indicia of this moral ascendancy may be found in the transcribe testimony of Olimpio. Based on the record, after Olimpio saw Jurry Andal hitting the victim, hoisting her on her shoulder and taking her to the forest, Olimpio ran to the safety of his home out of fear (tsn, p.21, Feb 16, 1995). That is why he unfortunately was not able to see with his own eyes the actual rape and killing of the victim. He lost composure and had to recover his mental disposition. Upon arriving home he was not able to disclose immediately to his wife the incident that he saw due to his confusion ("Gulong-gulo na po ang isip ko"; *ibid.*, p. 22). And when he did, he simply told her, "Marilyn, may sinuntok na maestra ang Manong Jurry" (*ibid.* p.23). Then just an hour or so later, at 8 o'clock that morning, accused-appellants went to see Olimpio at his house and his "Manong Jurry" threatened his life (*ibid.*, pp. 24-25). His "Manong Jurry" successfully intimidated Olimpio for 12 days before Olimpio could gather courage, regain his composure and come forward to tell the authorities of what he witnessed, denouncing accused-appellants, two of whom are the brothers of his own wife.

On the other hand, Jurry and Ricardo Andal attempted to prove motive on the part of Olimpio to falsely testify against them by painting a picture of an aggressive and vengeful Olimpio Corrales who, just because he was asked why he frightened or spooked Jurry Andal's cow. Was provoked to say "May araw ka rin"; the latter's "dampa" traversed his place; and one who is as cunning and ruthless as someone who would point to the brothers of his own wife and his long-time barrio-mates as the perpetrators of a serious crime such as rape with homicide just because it was said that his residence is nearest to the crime scene. This aggressive and scheming picture of Olimpio is not consistent with the Olimpio who ran to his house upon initially seeing Nancy Siscar being attacked; the one who waited for 12 days before he could gain courage to denounce the culprits; the one who, as testified to by police officers Maderazo and Dinglasan out of fear, even told the police on July 11, 1994 to keep his statement confidential.

We thus hold that Olimpio Corrales had no reason to testify against accused-appellants other than the fact that he just wanted to speak the painful truth.

Accused-appellants then resort to nothing inconsistencies in Olimpio's testimony. In his sworn statement (p. 5, Records), Olimpio said that Ricardo Andal took the victim's shoes and Edwin Mendoza took the victim's bag; he interchanged these actions during his direct examination; and on cross-examination, when he was confronted with the inconsistency in his statements, he said that his answers in his sworn statement are the correct ones. Further, he also could not tell who took the victim's umbrella, which accused-appellants described as a "bigger and more conspicuous item than the shoes and the bag."

Could it be that Olimpio Corrales overlooked the aforesaid matters since his attention was focused on the more important and provocative matter of Nancy Siscar being attacked by the culprits? It has been our consistent ruling that minor incongruences are actually indicative of honest and unrehearsed declarations and responses of witnesses and thereby even enhance their credibility (*People v. Reyes*, 245 SCRA 785 SCRA [1995]; *People v. Loto*, 248 SCRA 59 [1995]; *People v. Deleon*, 248 SCRA 609 [1995]). The trivial inconsistencies alluded to by accused-appellants cannot discredit Olimpio's testimony, which taken as a whole, is worthy of full credence. It matters little as to who actually picked up the victim's shoes and bag, and it is too trivial to quibble over the hapless victim's umbrella. What is important and of central significance is that Olimpio saw the 3 accused-appellants, 2 of whom are his wife's own brothers, perform all the acts preparatory to their bestial rape and killing of Nancy.

Further, although there may have been some inconsistent statements in Olimpio's testimony as to whether or not he denounced accused-appellants during the July 11, 1994 police investigation, this should not change the simple fact that he had personal knowledge of the incident and was merely initially inhibited by fear in divulging the same to the police.

All the accused-appellants could offer by way of defense are denial and alibi. These defense are inherently weak (*People v. Legaspi*, 246 SCRA 206 [1995]) and constitute an unstable sanctuary for felons. They cannot prevail over the positive testimony of credible prosecution witnesses (*People v. Villanueva*, 242 SCRA 47 [1995]).

For the defense of alibi to prosper, it must be sufficiently convincing as to preclude any doubt on the physical impossibility of the presence of the accused at the locus criminis or its immediate vicinity at the time of the incident. (*People v. Sumbillo, et al.*, April 18, 1997; *People v. Morin*, 241 SCRA 709; *People v. Lopez*, 249 SCRA 610 [1995]; *People v. Jose*, 250 SCRA 319 [1995]). Of course, the trial court did not shift the burden of proof to accused-appellants when it declared that in invoking the defense of alibi, they indubitably had the burden of proving such impossibility, in which they failed.

We have to agree with the trial court that Jurry Andal and Ricardo Andal, who alleged that they were at their respective homes, and Edwin Mendoza, who testified that he was working in a construction site, during the time of commission of the crimes charged, were all in one barangay, Banoyo, which is "merely a few minutes walk away from the crime scene" (p. 50, Rollo). These, in addition to the fact that witnesses for the defense are all members of the Andal Family, can not but create the gravest doubts as to the veracity of the alibis.

We are likewise convinced the accused-appellants had a common criminal objective when they attacked Nancy Siscar.

A conspiracy exist when two or more person come to an agreement concerning the commission of a felony and decide to commit it (*People v. Abarri*, 242 SCRA 39 [1995]). It cannot be merely presumed. Similar to the physical act constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt (*Magsuci v. Sandiganbayan*, 240 SCRA 13 [1995]).

From the chain of circumstances established by the prosecution, specifically the whistling incident which involved all three accused-appellants, as well as their act of going over to Olimpio's house to threaten him, a conspiracy can be deduced. And even if it was only Jurry Andal who hit the victim, it was established that when Jurry Andal carried Nancy to the forest, the other two hurriedly picked Nancy's things and followed suit. They had their own part to perform.

Admittedly, no proof of previous actual agreement among accused-appellants was adduced at the trial. However, we need but recall that-

... direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy ,maybe, and from the secrecy of the facts and circumstances which, taken together, apparently indicate that they are merely part of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishments of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative indicating a closeness of personal association and a concurrence of sentiment, then a conspiracy maybe inferred though no actual meeting among them to concert means is proved (*People v. Carbonel*, 48 Phil. 868; See also *People v. Viray*, 147 SCRA 146; *People v. Balignasay*, G.R. No. 76743, May 22, 1992; *People v. Galit*, 230 SCRA 486)...

(*People vs. Miranday*, 242 SCRA 620, 627 [1995])

We now pass upon the contention of accused-appellants regarding violation of their constitutional rights under Section 2 and 12 (1) of the fundamental law.

Accused-appellants were arrested by virtue of a warrant on the basis of Olimpio Corrales' statement given before SPO3 Romulo B. Mercado at Camp Gen. Malvar in Batangas City on July 18, 1994. They were frisked after being brought to the police station of San Luis, Batangas. Resultantly, SPO2 Lolito Dinglasan was able to recover a single piece of earring from Jurry Andal's pocket (tsn, p. 17, Aug. 4, 1995). Jurry Andal on the other hand claims that said earring was recovered from his right ear lobe (tsn, p. 16, Sept. 22, 1995).

We have ruled that a significant exception to the necessity for a search warrant is when the search and seizure is effected as an incident to a lawful arrest (*People v. Figueroa*, 248 SCRA 679 [1995]). An arresting officer may take from the person arrested any money or property found on his person which was used in the commission of the crime or was the fruit of the crime or which might furnish the prisoner with the means of committing violence or escaping, or which may be used in evidence in the trial of the case (*Aballe v. People*, 183 SCRA 196, [1990], *Moreno v. Ago Chi*, 12, 12 Phil. 439 [1909]; *People v. Veloso*, 48 Phil. 168 [1925]; *Alvero v. Dizon*, 76 Phil. 637 [1946]). It is clear from the records that accused-appellants were arrested last July 20, 1994. The earring was recovered from Jurry Andal while he was being frisked for deadly weapons. And even if said earring was taken from Jurry Andal's right ear lobe, the search would still be valid since jurisprudence allows seizure of evidence in plain view (*Harris v. United States*, 390 U.S. 234, 236, [1968]). Hence, there is no question that said earring is admissible in evidence.

The earring was later identified by Nenita Siscar as the other half of the pair of earrings she gave Nancy three years before (tsn, pp. 43-44, Sept. 1, 1995). Its admissibility certainly gives rise to another circumstance which, when added to the unbroken chain of proven and established events, strengthens the conclusion of guilt.

We, however, find a violation of accused-appellants' right to counsel during the custodial investigation. Police Senior Inspector Amelia Maderazo herself admitted on cross-examination that she did not apprise accused-appellants of their constitutional right to counsel after their arrest:

Q: Was it true that you appraised the accused the constitutional right to counsel after their arrest and after they were brought to the police station of San Luis, Batangas.

A: I could not remember that I appraised them of their constitutional right because they were arrested by virtue of warrants.

Q: And you are not sure now, you cannot tell this court categorically whether or not you appraised the three accused of their constitutional right to counsel after their arrest and before the pockets of Jurry Andal was searched.

ATTY. PRINCIPE:

Answered already, your honor, there's no need for that because it came from his own pocket.

ATTY. DE CASTRO:

I am asking the witness, Atty. Principe is testifying.

ATTY. PRINCIPE

I have the right to object.

COURT

It's up for the witness, can you answer that.

ATTY. PRINCIPE:

I did not appraise (tsn, pp. 30-31, Sept. 1, 1995)

The first paragraph of section 12, Article III of the 1987 Constitution lays down the safeguards available to any person under custodial investigation. The rights set forth therein become available when "the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements" (*Escobedo v. Illinois*, 378 U.S. 478 [1964]). These constitutional guarantees have been made available to protect him from the inherently coercive psychological, if not physical, atmosphere of such investigation (*Miranda v. Arizona*, 384 U.S.436 [1966]). The right to counsel as provided in said section attaches upon the start of an investigation or when the investigating officer starts to ask questions to elicit information and/or confession or admissions from the respondent or accused (*Gamboa v. Cruz*, 162 SCRA 642 [1988]). The presence of counsel during such investigations is intended to prevent the slightest coercion as would lead the accused to admit something false (*People v. Layuso*, 175 SCRA 47 [1989]). Without counsel present, no evidence obtained as a result of the interrogation can be used against the accused (*Miranda v. Arizona*, supra.).

Nevertheless, the aforesaid constitutional infirmity cannot affect our conclusion since accused-appellants did not make any confessions or admissions in regard to the crimes charged. Further, the earring recovered from Jurry Andal was not obtained in the course of the investigation itself. As mentioned above, it was obtained through a search incident to a lawful arrest.

With respect to accused-appellants' arguments that the prosecution suppressed vital and material evidence when it failed to present Alfredo Amoguis during the trial, suffice it to say that the evidentiary presumption under Section 3 (e), Rule 131 of the Rules of evidence which provides that "evidence wilfully suppressed would be adverse if produced" does not apply if (a) the evidence is at the disposal of both parties (*People v. Ducay*, 225 SCRA 1 [1993]); (b) the suppression was not wilful; (c) it is merely corroborative or cumulative; and (d) the suppression is an exercise of a privilege (*People v. Navaja*, 220 SCRA 624 [1993]).

In its brief, the Office of the Solicitor General correctly points out that the People had the discretion to decide whether or not the aforesaid witness should be presented during the trial. Then too, the defense had access to the witness and could have moved for the issuance of a subpoena to compel the witness to testify. This, the defense opted not to avail of.

Lastly, we pass upon the alleged formal defects of the trial court's decision. We are convinced of its compliance with Section 3, Rule 120 of the Revised Rules of Court since the Court's copy bears the signature of judge Amando Hernandez. With respect to the trial court's finding of conspiracy or concerted action, it is clearly based on the facts comprehensively stated in the body of the 32-page decision.

In fine, although the victim Nancy Siscar may have been silenced by her violent death, we hold that the evidence presented by the prosecution justly speaks for her and establishes beyond reasonable doubt that the accused-appellants perpetrated the crimes charged.

As to accused-appellants' civil liability, the trial court correctly awarded P 50,000.00 as indemnity for death in accordance with current jurisprudence, and P 74, 470.50 as actual burial and incidental expenses, the same being supported by documentary evidence and being admitted by accused-appellants (tsn, Sept. 1, 1995, pp. 51-52). The testimony of the victim's mother, Nenita Siscar, justifies moral damages awarded 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. However, the amount of P 200,000.00 awarded therefor by the trial court seems to be a bit

inflated. We believe that P 50,000.00 would be more reasonable.

WHEREFORE, with two members of the Court voting to reduce the penalty to reclusion perpetua, the decision under review is hereby AFFIRMED, except for the reduction of the award of moral damages, as above indicated.

SO ORDERED

Narvasa C.J. , Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

Mendoza, J., on leave.

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