

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. RENE TAPALES Y SUMULONG, ACCUSED-APPELLANT*G.R. No. 125808. September 03, 1999*

Ponente: BELLOSILLO, J.

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Circumstantial evidence, or testimony not based on actual personal knowledge or observation of the facts in the controversy but of other facts from which deductions are drawn,[1] must be weighed and acted upon with extreme caution, particularly when the crime for which the accused stands to be convicted of is a heinous crime that carries with it the supreme penalty of death.[2]

At around 6:00 in the morning of 20 January 1995 the lifeless body of Mildred Calip was found sprawled on a grassy portion of the western shoulder of Lira Street, Lores Country Homes, Antipolo, Rizal, some 110 to 120 meters away from the subdivision's water reservoir. Dr. Ma. Cristina Freyra, Medico-Legal Officer of the PNP Crime Laboratory, conducted an autopsy of the victim's cadaver at 2:00 in the afternoon. Dr. Freyra found that Mildred sustained 25 punctured wounds, 3 stab wounds, 6 contusions, 2 linear abrasions and fresh hymenal lacerations. Cause of death was hemorrhage resulting from multiple punctured wounds inflicted on her neck.[3] For Mildred's brutal death under the circumstances as reported, Rene Tapales y Sumulong, together with two (2) John Does, was charged before the Regional Trial Court of Antipolo, Rizal, with the complex crime of rape with homicide.[4]

On 22 February 1995 the prosecution filed a petition for change of venue of trial to avoid miscarriage of justice alleging that the government witness were threatened and consequently afraid to testify as the relatives of the accused were reportedly influential in Antipolo, Rizal, where the crime was committed. On 24 February 1995 a similar motion to transfer venue was also filed, this time by counsel for the accused, purportedly to safeguard the latter's interest as the father of the victim was a government prosecutor in Rizal. This Court granted the motion.[5] and transferred the venue to the Regional Trial Court of Manila.[6] Thereafter the case was docketed as Crim. Case No. 95-144437 and raffled to RTC-Br. 35, Manila.

Ferdinand Calip, brother of Mildred, testified that on 20 January 1995, at around 5:30 in the morning, Mildred left their house at No. 40 Santos Compound, Golden Hills, Antipolo, Rizal, to attend her classes at the Far Eastern University where she was a second year Medical Technology student. According to him, he accompanied her to the gate of the Santos Compound to board a tricycle that would take her to the bus terminal. He claimed that when they reached the gate a white tricycle with black mudguard, an antenna and a stereo stopped in front of them. There he noticed a person, whom he later identified as Rene Tapales, already on board. After Mildred had boarded the tricycle, he returned home and slept again.[7]

Randy Ejara, a tricycle driver, narrated that at around 5:45 that same morning he was walking along Lira Street on his way to get his tricycle from his operator when three (3) tricycles coming from the direction of the subdivision's water tank slowly overtook him. He remembered one of the tricycles distinctly as it was only about

three (3) meters away on his right. It had a white sidecar with a black mudguard and an antenna. The tricycle driver was pushing his vehicle forward with his left foot. Ejara also claimed that he saw Rene Tapales on board the sidecar and the latter appeared afraid and agitated, looking at different directions, and back to the direction of the water tank. Ejara further alleged that when Tapales realized his presence, Tapales immediately faced the windshield and touched the right arm of his driver who forthwith revved his engine and sped towards Franc St. to exit from Lores Subdivision.[8]

Fiscal Edilberto H. Calip, father of Mildred and Ferdinand, also testified that at around 6:30 in the morning of the same day, a newspaper reporter informed his family that the lifeless body of Mildred was found near the subdivision's water reservoir. The elder Calip rushed to the crime scene and found the body sprawled on the ground. He brought her immediately to the Antipolo General Hospital where she was pronounced dead on arrival.[9]

Rogelio Adan[10] and Nelson Baran,[11] both barangay tanod(s) of Purok 14, Brgy. San Roque, claimed that early the following morning, 21 January 1995, between 3:00 and 3:30, they were patrolling the area near Gate 2 of Lores Country Homes when they saw a person pass by. They later identified him as Rene Tapales. Since it was still too early in the morning and Tapales was carrying a candle their suspicion was aroused, prompting them to follow him until they reached the very spot where the body of Mildred was found the day before. Adan and Baran asked Tapales why he was there at such an unholy hour. Tapales answered, according to

them, that he was there to light a candle for Mildred so her parents would forgive him, and when prodded to explain why he wanted to ask forgiveness, Tapales vaguely answered that he knew Mildred and the identity of her killers.

On the basis of Tapales' response, Adan and Baran arrested him and then handcuffed him. Then they looked for a vehicle to take them to Antipolo Police Headquarters. On their way to the headquarters they passed the house of Fiscal Calip. After Fiscal Calip saw Rene Tapales in the company of Adan and Baran, the fiscal advised them to proceed to the police headquarters. Both barangay tanod(s) maintained that Fiscal Calip identified Tapales while he was with them on board their vehicle. Adan and Baran claimed that before reaching the police station Tapales attempted to jump out of the vehicle but failed. Over at the police station, Tapales was found to have abrasions and hematomas on his right elbow, contusions on his right lower knee and several scratches on both arms and neck, but did not explain how he sustained them. His briefs were said to be inverted and stained with blood.

Rene Tapales denied having anything to do with what befell Mildred Calip. He claimed that he was busy working for his uncle Tony Gloria the whole day of 19 January 1995 so that after he finished his task for the day he and his uncle took their supper in the house of his Inang Lucing. After dinner he spent some moments with his friends at the Tambayan Lechonan. He went home at 9:00 that evening and fell asleep fifteen minutes later. He woke up at 7:30 the following morning.[12]

Tapales admitted that he went to the crime scene at 3:00 in the morning of 21 January 1995 but denied having told barangay tanod(s) Adan and Baran that he (Tapales) was going to light a candle to ask forgiveness from Mildred's parents. Instead, he clarified that he only wanted to light a candle for the eternal repose of Mildred's soul as it was his practice to pray for the souls of the dead. He also denied having been told to undress at the police station, to refute the claim of the prosecution that he was wearing an inverted brief that was stained with blood.

But his explanation, clarification, and even denial notwithstanding, the trial court found Rene Tapales guilty of rape with homicide and imposed upon him the supreme penalty of death. According to the trial court, the following circumstances demonstrated the guilt of the accused:

- (1) that some 30 minutes before she was found dead at about 6:00 o'clock in the morning of 20 January 1995, Mildred Calip was last seen alive in the company of the accused as a co-passenger in a tricycle;
- (2) that minutes before the corpse of Mildred was discovered, the accused was seen fleeing on Lira Street away from the general direction of the water tank of Lores Country Homes towards the exit road of the subdivision;
- (3) that shortly after the accused ha[d] gone, the lifeless body of Mildred was discovered sprawled on a grassy and cogonal spot, more or less one and one-half meters from the cemented edge of Lira Street, and about 110 to 120 meters away from the said water tank;
- (4) that on January 21, 1995, between 3:00 and 3:30 in the morning, the accused was again seen in the vicinity of the scene of the crime, visibly remorseful and intensely disturbed by his conscience; and
- (5) that when he was physically examined, the accused was found with extensive physical injuries consisting of scratches, lacerations, hematomas and contusions mostly sustained on the arms, neck and legs, which he failed to account how he sustained them x x x [13]

Apparently, the trial court disregarded the defense of alibi. It observed that it was not physically impossible for Tapales to be at the locus criminis at the time the crime was perpetrated as it could easily be reached in 30 to 40 minutes from his house. Likewise, the trial court found the reason of Tapales for going to the crime scene, i.e., to pray for the soul of the dead, preposterous if not absurd as he did not offer any plausible explanation for choosing such an unusual hour to perform his ritual. The trial court interpreted his actuation as that of someone who, although wistful at appeasing his troubled conscience, wanted to avoid culpability.

On the other hand, the court a quo accorded full faith and credence to the testimonies of Ferdinand Calip, Fiscal Edilberto H. Calip, Randy Ejara, Rogelio Adan and Nelson Baran, the first two (2) having a natural interest in securing the conviction of Rene Tapales, and the other three (3) being disinterested witnesses who were not related in any way to the victim and without any ill motive to testify against the accused.

The trial court, in convicting the accused under Art. 335 of the Revised Penal Code as amended by Sec. 11, RA No. 7659, considered the extensive scratches on his arms, neck and other parts of his body, the abrasions, hematomas and contusions found in his arms and legs, as well as the contusions and abrasions on the different parts of Mildred's body, as indications of the fierce resistance she put up to repel his loathsome assault on her virtue. The court a quo theorized that to overcome the furious struggle of the offended party to defend her honor, if not her life, the perpetrator savagely hit his hapless victim on different parts of her body, mostly her neck, which ended her life.

Death now lurks upon accused Rene Tapeales on the basis of circumstantial evidence put together by the court a quo. Admittedly, no direct evidence links the accused to the crime; only mere strands and splintered pieces to tag him as the culprit. For sure, none of those presented in court witnessed the commission of the crime.

Our task then is to discover whether the circumstances when assembled together could form a pattern that would clearly and positively implicate the accused to the victim's tragedy.

Circumstantial evidence to be sufficient for purposes of conviction must have the following elements: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proved; and, (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[14] The circumstances proved should 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. From all the circumstances, there should be a combination of evidence which in the ordinary and natural course of things leaves no room for reasonable doubt as to his guilt.

As we review and evaluate the circumstances considered by the trial court in arriving at its decision, we find ourselves unable to justify a finding of guilt beyond reasonable doubt.

First. The trial court overlooked the significance of the un rebutted testimony of one of the defense witnesses, Venancio Medina, who first discovered the body of the victim at around 5:30 in the morning on 20 January 1995, in relation to the testimonies of the prosecution witnesses, Medina was a taxi driver who managed the taxicab business of a niece who lived along Lira St. He claimed that on 20 January 1995, while he was cleaning the taxis and waiting for their drivers to arrive, a young jogger approached him and informed him that he saw a white object lying near the street.

Together they went to the place where the curious-looking object was, and because it was still dark at 5:30 in the morning he used the headlights of his car to illumine the white object. It was then that they saw a woman lying on the ground.

Medina reported the incident first to the barangay tanod stationed at the guardhouse and then to the police authorities. According to him he also related the incident to a newspaper reporter then present at the police headquarters.[15] His testimony coincides with that of barangay tanod Nelson Baran who also said that on 20 January 1995, at around 5:45 in the morning, a person reported to him at the guardhouse that a dead woman was found near the water tank of the subdivision. This confirms the claim of Ferdinand and Fiscal Calip that they came to know about the fate of Mildred through a newspaper reporter. As full weight and credence must be given to the testimony of Venancio Medina since it was undisputed, reasonable doubt is at once cast on Ferdinand Calip's testimony that he saw his sister Mildred last in the company of the accused as a co-passenger in a tricycle at around 5:30 in the morning on 20 January 1995. It can hardly be believed that at 5:30 in the morning of that day two (2) persons saw Mildred: Ferdinand Calip, while she was still alive, and Venancio Medina, when she was already dead.

Worth noting, likewise, was Ferdinand Calip's admitted failure to tell anyone immediately after he found out that his sister was raped and killed that he saw a person resembling Rene Tapales on board the tricycle which she took.[16] Even assuming arguendo that he really saw the accused in that tricycle, it baffles us no end that he was unable to determine the reason why the accused was presented to him the very next morning following his sister's gruesome death.[17]

As earlier intimated, we cannot help viewing with unabated distrust Ferdinand's narration that he saw his sister off at 5:30 that morning of 20 January 1995. Certainly, we can fairly assume that the reason why he walked his sister to the gate of their compound was to ensure that her tricycle ride would be safe for her or that she would be in safe company. If it was true that Ferdinand saw his sister off that morning, would he have allowed her to take the tricycle with a driver and a male passenger both unknown to him? Would Ferdinand entrust the safety of his sister to males who were total strangers? At the very least, he would have seen to it that his sister took a tricycle with another female passenger on board or, may be, without any other passenger; otherwise, he did not have to accompany her to the gate until she could take a tricycle if, after all, she could just take any tricycle even with complete strangers on board. Was not her security his primordial concern?

All these make it difficult to give full faith and credence to Ferdinand's testimony. They inevitably lead us to believe that his identification at their residence of Rene Tapales could only have been concocted, if not devised, to conform with the prosecution's "evidence" then on hand, i.e., a suspect in the person of Rene Tapales and merely because of his presence that early morning near the place where Mildred's body was found.

Second. Prosecution witness Randy Ejara testified that minutes before the corpse of Mildred was discovered, the accused was seen fleeing on Lira Street away from the general direction of the water tank of Lores Country

Homes, towards the exit road of the subdivision. This was put to doubt during an ocular inspection on the premises exactly on the same date a year after. It was stipulated by the parties during the ocular inspection that at around 5:30 in the morning the skies were still dark and the sun had not yet risen.[18] It was also observed by the defense counsel that the place where the tricycle, its driver as well as its passenger were seen was against the light coming from the lamppost on the street making it almost impossible for any person facing the right side of the light to be recognized.[19] While the prosecution was reluctant to stipulate on this point, the trial court nevertheless noted the observation.[20]

The impossibility of recognizing the accused and the tricycle driver was further bolstered by the testimony of one William Macalinao, then president of the homeowners association in Lores Country Homes. He testified that on 20 January 1995 there were no lights yet in the area where Randy Ejara allegedly saw Tapales. He substantiated his claim through the production of letters that he sent Meralco requesting that lights be installed on several streets in the subdivision including the area under scrutiny.[21] Engineer Modesto Dime of Meralco corroborated his claim.[22] Thus, if visibility was questionable when there were lights in the area, how much more when there were none at all?

Third. Barangay tanod(s) Adan and Baran testified that the accused went to the vicinity of the crime scene the day following the commission of the crime, particularly between 3:00 and 3:30 in the morning, "visibly remorseful and intensely disturbed by his conscience." [23] This is highly speculative, incompetent, untrustworthy, so-called "hot-and-cold" evidence. It is elementary that resort to speculation and conjecture is indicative of paucity of evidence. While the accused did not deny his presence the following morning at the crime scene at such an unholy hour with a candle intended to be lighted for the soul of the victim, which act indeed could have created doubt on his innocence as it obviously deviated from the common norm, it does not warrant a conclusion ipso facto that he is guilty of the crime charged.

Fourth. At the police station, Rene Tapales was found with injuries which he reportedly did not explain, thus giving the impression that he could have sustained them while in the act of raping and killing Mildred. We searched the records and our suspicion was confirmed that he was never asked to explain how he got them. The prosecution merely presumed that such injuries were incurred in a scuffle with the deceased without exerting any effort on its part to find tangible proof or telltale signs that could lead to a reasonable inference that indeed the accused acquired those injuries during his brutal assault of the victim. As the defense is not called upon to disprove what the prosecution failed to prove, this piece of evidence must of necessity be disregarded.

Dr. Rodrigo C. Ambas, Municipal Health Officer of Antipolo, who conducted a routine physical examination of the accused, testified that Tapales had "abrasion and hematoma on the right elbow, contusion on the lower knee and small scar on part of his hand." [24] Obviously, the injuries were not as extensive as the prosecution and the trial court intimated - no mention was ever made that he sustained scratches on his arms and neck. As Dr. Ambas explained, Tapales could have sustained the injuries through "falling or (a) vehicular accident or crawling." [25] Moreover, Dr. Ambas added on cross-examination that the injuries although seemingly fresh could have been sustained by the accused a day prior to Mildred's brutal rape and killing. Quite significantly, the doctor explained that he failed to mention this fact because he knew that the accused was already a suspect and testifying further could hamper the resolution of the case.

In an effort to further incriminate the accused, barangay tanod Adan was made to testify that Tapales was told at the police station to remove his shorts and that they found him wearing an inverted brief that was stained with blood. Of course, this was categorically denied by the accused. No other evidence was ever adduced by the prosecution to support this claim. Neither SPO2 Gil A. Colcol, who investigated Tapales, was asked to confirm this allegation. Despite the prosecution's emphasis on the accused's inverted brief that was bloodstained, such very

important piece of evidence was never presented as an exhibit in court, and the prosecution did not even attempt to explain such omission. In fact, this brief - with all its "incriminating" features - was allegedly discovered in the police station while in the custody of the police and, yet, that valuable piece of evidence was not preserved for purposes of presenting it in evidence. Thus, we are left with no choice but to discard this testimony of Adan as worthless. Besides, given the extent of the injuries of the victim - 25 punctured wounds, 3 stab wounds, 6 contusions, 2 linear abrasions and fresh hymenal lacerations - the clothes of the rapist-killer would have inevitably been spattered with and drenched in blood. In such event, the culprit would have hastily changed his clothes to avoid culpability, and that would include his brief if it was so stained with blood. Thus, it is highly incredible that he would wait a minute longer with such incriminating evidence as a bloodstained brief without changing it, washing it, or at the very least, hiding it from public view. In this regard, the version of the prosecution is hardly normal, hence, difficult to believe.

Fifth. The prosecution speaks, often enough, of a "white tricycle with black mudguard, an antenna and a stereo." But did the prosecution endeavor to identify and locate that tricycle, its driver, its owner, who could have shed light on what appeared then to be a mystery enshrouding the killing and raping of Mildred Calip? It did not. Her father, a public prosecutor of Antipolo, Rizal, could have mobilized all law enforcement agencies, including the National Bureau of Investigation, to track down the rapist-killer of his daughter. He also did not.

We are disturbed why the accused had to be taken to the Calip residence only for purposes of identification, instead of being brought immediately to the police station for proper investigation, thus obviously deviating from the standard procedure followed by arresting officers. We also find it disquieting why Rene Tapales had to be identified by Fiscal Calip when the latter did not even know the former before he was presented to him.

Sixth. Very pertinent and relevant is the time element involved in the narration of facts by the prosecution witnesses in relation to the injuries of the victim. Mildred boarded the tricycle at around 5:30 in the morning and her body was found lifeless 30 minutes later, or even less, with 36 external injuries and fresh hymenal lacerations. Considering that she had to take a tricycle to the bus station, and in the course of that ride, or immediately after, she was raped and killed, and was found dead at 6:00 that same morning, the rape and murder could have been perpetrated in much shorter time than 30 minutes. Indeed, it cannot be discounted that the complex crime could have been the handiwork of a drug-crazed criminal element, and there is no showing, nor is it even hinted that the accused was a drug user. Consequently, the perpetrator or perpetrators of the dastardly act are still on the loose!

Finally. The Information charged accused Rene Tapales together with two (2) John Does with the complex crime of rape with homicide alleging that all three (3) conspired in the commission thereof. However, nowhere in the records is it shown that the prosecution attempted to establish such cabal and Tapales' actual participation therein. In fact, the records show that the only basis for the imputation of the crime on the three (3) accused was the alleged statement of Rene Tapales to barangay tanod Nelson Baran "kutob ko ay tatlo ang dumali doon." Even Dr. Freyra, the Medico-Legal Officer who autopsied the body of Mildred, failed to mention how many persons could have perpetrated the crime. The crux of her testimony was on the injuries sustained by the victim, the fact of her sexual violation and subsequent death, and the cause thereof.

In sum, the evidence collated by the prosecution clearly falls short of the quantum of proof required to convict the accused of the crime charged. Indeed, we realize how painful and heartbreaking it must have been to the Calip family and we can only empathize with them. However, the law must at all times be sustained. Hence, in dubilis reus est absolvendus. All doubts must be resolved in favor of the accused. This Court, in absolving the accused, does not at all rule out the possibility of his guilt but only reiterates with emphasis the fundamental tenet that in order to convict the accused the proof of his guilt must be beyond reasonable doubt; otherwise, he must be set free conformably with the principle that insufficiency of evidence must be resolved consistent with the theory of

innocence.[26]

WHEREFORE, on reasonable doubt, the decision of the court a quo is REVERSED and SET ASIDE. Accused RENE TAPALES y SUMULONG is ACQUITTED of the crime of rape with homicide and is ordered immediately released from custody unless held for some other lawful cause.

The Director of Prisons is DIRECTED to implement this decision immediately and to inform this Court within five (5) days from receipt of this decision of the date the accused is actually released from confinement. Costs de oficio.

SO ORDERED.

Melo, Mendoza, Quisumbing, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur. Davide, C.J., Kapunan, and Ynares-Santiago, JJ., joins J. Puno's dissenting opinion. Melo, and Panganiban, JJ., joins J. Puno's dissenting opinion and vote to impose "reclusion perpetua" on constitutional ground. Puno, J., see dissenting opinion.

[1] People v. Yokum, 145 C.A. 2d 245, 302 p. 2d 406, 410, cited in Black's Law Dictionary, 6th Ed., p. 243.

[2] People v. Jara, G.R. Nos. 61356-57, 30 September 1986, 144 SCRA 516.

[3] TSN, 27 October 1995.

[4] Information, p. 1; Rollo, p. 9.

[5] Pursuant to Sec. 13, Art. VIII, 1987 Constitution.

[6] Resolution of 4 July 1995; Records, pp. 106-107.

[7] TSN, 30 October 1995, pp. 24-54.

[8] TSN, 25 October 1995, pp. 1-59.

[9] TSN, 13 December 1995, pp. 54-55.

[10] TSN, 16 October 1995, pp. 1-50.

[11] TSN, 18 October 1995, pp. 1-52.

[12] TSN, 14 December 1995, pp. 8-32.

[13] Decision, p. 7; Rollo, p. 33.

[14] Sec. 4, Rule 133, Revised Rules of Court.

[15] TSN, 23 November 1995, pp. 3-9.

[16] See Note 8, p. 51.

[17] Id., p. 47.

[18] TSN, 25 October 1995, pp. 1-59.

[19] Id., p. 16.

[20] Id., pp. 19-20.

[21] TSN, 5 March 1996, pp. 3-48.

[22] TSN, 26 March 1996, pp. 2-27.

[23] See Note 14.

[24] TSN, 30 October 1995, p. 9.

[25] Ibid.

[26] *People v. Maluenda*, G.R. No. 115351, 27 March 1998, 288 SCRA 225 citing *People v. Godoy*, G.R. Nos. 115908-09, 6 December 1995, 250 SCRA 676.

DISSENTING OPINION

PUNO, J.:

With due respect to our esteemed colleague Mr. Justice Josue N. Bellosillo, I dissent from the majority Decision for the following reasons:

First. The testimony of Ferdinand Calip deserves full faith and credit. Ferdinand is the brother of the victim. He was eighteen (18) year old student when he testified. I cannot imagine any reason why he should perjure himself in identifying the accused-appellant as the person inside the tricycle when his sister boarded it. The accused-appellant was unknown to him and his family. There is thus no motive for him to wrongly implicate accused-appellant of a crime punishable by death. It bears stressing that Ferdinand did not allege that accused-appellant committed the crime at bar. He merely informed the authorities of the fact that the accused-appellant was in the tricycle boarded by his sister before she was raped and killed.

The majority doubts the testimony of Ferdinand allegedly because it was unnatural for him to have allowed the victim to board the tricycle when its driver and male passenger were unknown to him. I submit that Ferdinand did not act strangely for nothing in the record shows that the driver and the male passenger did anything to stir up any suspicion that they would commit a criminal act. It is of judicial notice that due to the scarcity of transport, people share seats with strangers even in tricycles. We ride in public vehicles without bothering about the names of drivers and our co-passengers.

I am not persuaded that Ferdinand lied when he testified that his sister boarded the tricycle at 5:30 a.m., even in the light of the testimony of Medina, a defense witness, that they discovered the body of the victim also at 5:30 a.m. Witness to crimes should be given reasonable leeway in their appreciation of time for it is uncommon to remember the exact time of events. In the case at bar, Ferdinand used to accompany his sister take a tricycle ride in the early mornings to go to school. He followed the same routine on January 20, 1995. As he was doing a routine job, there was no reason for him to remember the time at exactly 5:30 a.m. His testimony stating the time at 5:30 a.m. when he let his sister board the tricycle was a mere approximation of the time at issue - - - it could be a few minutes earlier or after. I submit that a few minutes of inexactitude does not mean that Ferdinand was peddling false testimony. Moreover, the evidence is not conclusive that Medina discovered the body of the victim at exactly 5:30 a.m. The records show that Medina based his time testimony on the clock inside his vehicle. There is no evidence however, to show how accurate the said clock was.

Similarly, I am not convinced that the failure of Ferdinand to immediately report that accused-appellant was inside the tricycle boarded by his sister that fateful morning is fatal. The omission should not be interpreted as a sure sign of falsehood. It can well be that Ferdinand, then young, 18-year old student, had yet no reason to suspect that the accused-appellant was the criminal. The initial shock that numbed the Calip family upon learning of the

despicable crime should also be considered in judging the confusion of Ferdinand. A thousand and one important things had to be done immediately by the victim's family, and one meaningless omission on the part of the teen-aged Ferdinand is no reason to condemn his testimony as incredible.

Second. The majority also belittles the testimony of Randy Ejara that at about 5:45 a.m. on January 20, 1995, he saw the nervous looking accused-appellant on board the sidecar of a tricycle traversing Lira Street. Allegedly, the ocular inspection of the place conducted by the trial judge in the presence of the parties demonstrated that it was impossible for Ejara to have seen the accused-appellant. With due respect, this is not the conclusion reached by the trial judge. In clear and categorical language, the trial judge declared in his decision:[1]

"x x x

"Acting on the Urgent Motion for Ocular Inspection filed by the defense on December 29, 1995, the Court ordered the ocular inspection of Lira Street where prosecution witness Randy Ejara said he was standing when the accused passed by on board the side car of a tricycle which came from the general direction of the water tank of the Lores Country Homes and heading towards Franc Street on its way out of the sub-division, to determine the illumination of that portion of the street and whether it was improbable for Randy Ejara to identify the passenger of said tricycle, on account of the assertion of the defense in its said motion that 'an ocular inspection, if made on the exact date and time when the body of the victim was found, would reveal that Lira Street is so dark it will diminish any opportunity for somebody like Randy Ejara to have a clear view of the passers-by on said street.' The Court fixed the ocular inspection at 5:30 o'clock in the morning on January 20, 1996, to approximate as far as it may be possible and practical the generally prevailing weather condition at the time and in the place of the incident in question when it happened.

"When the Court and the counsels reached the site, subject of the ocular inspection and witness Randy Ejara pointed the exact spot where he was standing at around 5:45 o'clock in the morning on January 20, 1995, when the tricycle ridden by the accused passed-by, the Court and the counsels found the place brightly illuminated by the light coming from the Meralco lamp post, the illumination covering a radius of about 18 meters, as estimated by the Court and the counsels. The spot where Randy Ejara was standing was only about six meters away from that Meralco lamp post. Hence, it is not improbable for Randy to recognize the accused inside the side car of that tricycle."

The majority also cites the testimonies of William Macalinao, then president of the homeowners association in Lores Country Homes and Modesto Dime of Meralco, to strengthen its conclusion that there were yet no lights in the area and hence, Ejara's testimony is weightless. Again, a reading of the Decision of the trial court very well explains why the testimonies of Macalinao and Dime cannot devalue the worth of Ejara's testimony, viz:

"x x x

"The Court is hardly impressed with the contention of the defense. The testimony of William Macalinao was offered for the purpose of proving that Lira Street was not lighted yet when the dead body of the victim was discovered. Nothing in the whole testimony of this witness, however, served the purpose for which the same was offered. What he declared was that it was Yuan Street which had no light yet on January 20, 1995. (TSN, March 5, 1996, pp. 14-15)

"Engineer Modesto Dime, on the other hand, has no participation or personal knowledge about the actual installation of the street lights in Lira Street. His only role in the project was to survey the site, propose the places where the street lights may be installed, and draw the sketch Exhibit 8, which he accomplished on December 11, 1994. His knowledge about when those street lights were put into operation was based merely on their record, referring to the entries appearing on the dorsal side of Exhibit 8. (TSN, March 26, 1996, p. 14). Admittedly however, he was not the one who made those entries, but a certain Benjamin Navea, Jr.

"In order that entries in the course of business may qualify under the exception to the hearsay rule, the party offering them must establish (sic): (1) the person who made those entries has been deceased or unable to testify; (2) the entries were made at, or near the time of the transaction to which they refer; (3) the entrant was in a position to know the facts stated therein; (4) the entries were made in the professional capacity or in the course of duty of the entrant; (5) the entries were made in the ordinary or regular course of business or duty. (Rule 130, Sec. 43, Revised Rules on Evidence)"[2]

Third. The majority dismisses as "highly speculative, incompetent, (and) untrustworthy" the testimonies of barangay tanods Adan and Baran that the accused went to the situs of the crime between 3:00 and 3:30 in the morning, "visibly remorseful and intensely disturbed by his conscience." Again, with due respect, these testimonies are not incompetent. They are admissible for section 26 of Rule 130 (c)(3) provides that the "act, declaration or omission of a party as to a relevant fact may be given in evidence against him." The appearance of an accused-appellant as remorseful is conduct which is relevant in considering his guilt or innocence. Body language can eloquently communicate truth. The doctrine of logical relevance allows a judge to draw a reasonable inference from the appearance of an accused as his appearance is a material fact. The inference should then be weighed in light of the other legally relevant evidence. But whatever its weight, it cannot be shunted aside as conjectural.

Fourth. The majority also states that the accused-appellant was never asked to explain why he had injuries and that the prosecution merely presumed that his injuries were incurred in a scuffle with the victim. It is then concluded that "as the defense is not called upon to disprove what the prosecution failed to prove, this piece of evidence must of necessity be disregarded." Again, I beg to disagree. There is no question that the injuries of accused-appellant were proved by the prosecution. These injuries partake of the nature of circumstantial evidence. Whether or not the accused-appellant sustained them during the rape-killing of the victim is a matter of inference addressed to the trial judge. An inference from a circumstantial evidence need not be the subject of proof as it is the function of logical deduction. For as long as the inference is reasonable, logical, and based on the experience of man, it is entitled to some weight.

Fifth. The majority also gives more credence to the denial of the accused-appellant that he was wearing a bloodstained inverted brief when he was apprehended. It was barangay tanod Adan who apprehended accused-appellant and testified on his brief. Adan had no axe to grind against the accused-appellant. He did not know the accused-appellant before his apprehension. Ancient jurisprudence tells us that his testimony deserves more credence than the denial of the accused-appellant.

The failure to preserve accused-appellant's brief and present it as evidence is a regrettable lapse on the part of the prosecution. The lapse, however, does not necessarily mean that the testimony of Adan on the matter was an out and out concoction. The lapse can well be due to the simple lack of experience of Adan in investigating rape with homicide cases. The Court should note that Adan is a mere barangay tanod. He is not experienced in police investigation, let alone investigation of heinous crimes. Indeed, it was his first time to apprehend a suspect involved in a rape with homicide case.

Similarly, the failure of the prosecution to locate and present the "white tricycle with black mudguard, an antenna and a stereo" is not fatal omission. The important thing is that the existence of said tricycle cannot be doubted. Neither can it be doubted that accused-appellant was seen riding in said tricycle. Ferdinand Calip saw him inside the tricycle before it was boarded by the victim at 5:30 A.M. Randy Ejara saw him inside the tricycle fleeing on Lira Street after the rape-killing of the victim. These testimonies cannot be given zero value just because the said tricycle and its driver were not presented by the prosecution.

Sixth. The majority floats the thesis that the real criminal could be a "drug-crazed element." The thesis is

premised on the great number of wounds inflicted by the criminal on the victim in a 30-minute struggle. Whether or not the criminal is drug-crazed is pure guesswork. What is not guesswork is that the criminal suffers from behavioral aberration. The accused-appellant exhibited such aberration. Visiting the site of the crime at 3 o'clock in the morning with a candle allegedly to pray for the soul of the victim is the best evidence of such aberration.

In sum, the circumstantial evidence established the guilt of the accused-appellant beyond reasonable doubt. In contrast, the alibi of accused-appellant is as weak as an overused rug. As aptly observed by the trial court:

"The alibi of the accused is inherently weak. It can not off-set and prevail over the collective weight of the prosecution's evidence. No jurisprudence in criminal case is more settled than the rule that alibi is the weakest of all defenses that an accused can avail of, in view of the ease by which it can be concocted and the great difficult[y] of proving it. For alibi to serve as basis for acquittal, the accused must established (sic) not only that he was at some other place when the crime was committed; he must also demonstrate by clear, convincing and trustworthy evidence that it was physically impossible for him to be at the scene of the crime at the time of its comission.

"In the case under consideration, it was not physically impossible for the accused to be at the crime scene at the time it was committed. The distance between the house of the accused at E. Leyba Street, Antipolo Rizal, and the spot in Lira Street, Lores Country Homes, Antipolo Rizal, where the victim was found sprawled lifeless can be easily negotiated in just approximately from thirty to forty minutes. This can be easily deduced from the testimony of the accused that leaving their house at 7:30 o'clock in the morning on January 20, 1995, he reached the church by jogging along the way between 7:45 and 8:00 o'clock the same morning (TSN, Dec. 14, 1995, pp. 12 & 24). On the other hand, the ocular inspection group left their meeting place at the Antipolo Church yard at 5:05 o'clock in the morning on January 20, 1996 and arrived at the site of the ocular inspection at 5:15 o'clock the same morning. While it may be conceded that the group rode on separate motor vehicles in going to the site, the vehicle taken by the Court did not accelarate (sic) to more than ten kilometers per hour considering the road turns and uphill drive it took." [3]

I vote to convict the accused-appellant.

[1] Penned by Judge Ramon P. Makasiar; Rollo, p. 342.

[2] Id., pp. 341-423.

[3] Id., pp. 339-340.

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