

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISIDRO MIJARES, ACCUSED-APPELLANT.

G.R. No. 126042. October 08, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A person may be convicted on the basis of circumstantial evidence, provided the proven circumstances inexorably lead to one fair and reasonable conclusion pointing to the accused as the guilty person, to the exclusion of all others. Where the evidence presented admits of other conclusions, the accused must be acquitted.

The Case

Appellant Isidro Mijares challenges before us the April 8, 1996 Decision[1] of the Regional Trial Court of Zamboanga City, Branch 16, in Criminal Case No. 13275, convicting him of murder and sentencing him to reclusion perpetua.

In an Information dated June 28, 1995, Third Assistant City Prosecutor Elpidio F. Nuval charged appellant with killing a six-year-old girl, Marissa Aguilar:

"That on or about June, 19, 1995, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in disregard of the respect due the offended party on account of her tender age and sex, by means of treachery and taking advantage of his superior streng[th], and with intent to kill, did then and there, wilfully, unlawfully and feloniously, assault, attack and slice the neck with the use of a bladed weapon that he was then armed with, at the person of MARISSA AGUIAR y MAAMBONG, a girl, 6 years of age, thereby inflicting upon the latter's person mortal injuries which directly caused her death, to the damage and prejudice of the heirs of said victim."

During his arraignment on July 14, 1995, Mijares, assisted by Counsel de Oficio Melchor Lim, entered a plea of not guilty.[2] Trial ensued in due course. Thereafter, the court a quo rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, the Court finds accused ISIDRO MIJARES GUILTY BEYOND REASONABLE DOUBT, as principal, of the crime of [m]urder for the unjustified killing of Marissa Aguilar y Maambong, without any mitigating or aggravating circumstance, and SENTENCES said accused to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties provided by law; to pay the heirs of the victim P10,500.00 as actual damages representing expenses incurred in connection with the victim's death; P50,000.00 as indemnity for the victim's death; P50,000.00 as moral damages and P30,000.00 as exemplary damages; and to pay the costs.

"The accused shall be credited in the service of his sentence the full period during which he was under preventive imprisonment."[3]

The Facts

Version of the Prosecution

In the Appellee's Brief,[4] the solicitor general presents the following narration of the facts.

"Around 5:00 in the afternoon of June 19, 1995, Marissa Aguilar, then six years old, was fetched by her mother Marilyn Aguilar from the Southcom Elementary School, Zamboanga City, where she was a Grade I pupil. Marilyn, at the time, was living with her 'live-in' partner, Adlai Mides, in Baliwasan Tabuk, Zamboanga City. As soon as she arrived home, Marilyn changed Marissa's clothes and washed them. Meanwhile, Marissa got her marbles inside an empty mayonnaise jar and asked her mother's permission to play outside.

"After washing clothes at 6:30 in the evening, Marilyn looked for Marissa at their neighbors' houses but she was unable to find her. She met Freddie, a friend of appellant Isidro Mijares, who warned her about appellant who was looking and waiting outside for her 'live-in' partner, Adlai, because appellant had a quarrel with Adlai and wanted to stab him. Marilyn went to the place where appellant was allegedly waiting for Adlai but did not find him there.

"She then continued to look for Marissa until 8:00 in the evening but her search was fruitless. She decided to fetch Adlai who was with his brother at Lower Calarian. The couple went home and prepared for supper. Adlai told Marilyn to look again for Marissa, but she was still unable to find her. This caused the couple to quarrel until their neighbor, Andy Antalan, a policeman, intervened and told them to concentrate instead on looking for Marissa (TSN, August 30, 1995, pp. 27-35).

"Another neighbor, Arnold Laurente, father of Arzen Lyod Laurente with whom Marissa was playing marbles that afternoon, told Marilyn that Marissa was with appellant who was drunk. They went to look for appellant at Elizabeth Oglos' house where he was reportedly staying, at the house of Cesario Mijares, appellant's brother, and at the house of their friends, but still to no avail (TSN, supra, pp. 36-39).

"They continued looking for Marissa the following day, June 20, 1995. At 11:20 in the morning of that day, Marilyn decided to go to the police station and report her daughter's absence. This was recorded in a Complaint Assignment Sheet (Exhibit C) (TSN, supra, pp. 42-43).

"On June 21, 1995, Marilyn saw appellant walking in Sta. Catalina district, Zamboanga City, and confronted him. He vehemently denied meeting Marissa and bringing her with him even when Marilyn brought him to the police station. But he was released because the police had nothing against him at that time (TSN, supra, pp. 44-46).

"In the morning of June 26, 1995, the body of Marissa was found on the floor of a room in the second storey of an old abandoned house near San Jose Road. Marissa was 'lying in a supine position, 'Tikangkang' (open legs), her mouth opened.' She was wearing a 'red jumper and it was worn with the back part of the dress in front, and the one that [was] supposed to be in front was at the back which was opened.' She was already in a state of decomposition, her color was already black, and there was some sort of oil or fluid oozing from her body. Also recovered from the scene of the crime were eleven pieces of marbles, a headband and a pair of blue slippers marked 'Rambo' (Exhibits L; L-1; O) (TSN, supra, pp. 49-59).

"The postmortem examination by Dr. Rodolfo M. Valmoria, [c]hief [m]edico-[l]egal [o]fficer of the PNP Crime Laboratory Service 9, Zamboanga City, showed the 'presence of sliced wound at the upper posterior neck' and the 'cause of death is cardiorespiratory arrest due to shock and hemorrhage secondary to sliced wound, posterior neck' (Exhibit I; I-1; and J). The victim's body was already in a state of decomposition (TSN, August 31, 1995, p. 4). When Dr. Valmoria first saw the victim, she was in a supine position, face up, her arms on her side and legs in open, flexed position. She had a wound on the upper portion on the posterior neck which could have been caused by a sharp-bladed instrument like a knife. The wound teemed with maggots. It was a fatal wound. The first

and second vertebrae were exposed.

"Dr. Valmoria checked the external genitalia for possible sexual assault but it was 'masked' because of the decomposed state of the body. Thus, he could not make a conclusion that the victim was sexually assaulted, but he opined that it was possible that she was sexually abused. The victim was then wearing a panty, short pants and a red jumpsuit which were all inverted, with their inside portions out, indicating that they were taken off and then put on again, possibly when the victim was already dead. Based on the condition of the cadaver, the victim could have been dead for about 5 to 7 days. It was also possible that she died in the evening of June 19, 1995 (TSN, August 31, 1995, pp. 4-9).

"Per testimony of Marilyn, the victim's mother, appellant was a friend of her 'live-in' partner, Adlai Mides. He was also a carpenter mason like Adlai. When they were both working at the construction of Baliwasan Commercial Complex just across the place where the dead body of Marissa was found, Adlai, taking pity on him because he had no place to stay, invited appellant to stay with them. Appellant stayed with them for two weeks in March 1995. Eventually, Adlai asked him to leave because he did not contribute for the food that he ate. When appellant was staying with them, the victim was close to him, played with him and even called him 'Uncle.' Whenever he called her, she readily approached him and even obeyed him whenever she was told to do something for him (TSN, August 31, 1995, pp. 15-18).

"Appellant returned thereafter and borrowed a hammer from Marilyn. At 3:00 in the afternoon of the incident in question, Marilyn saw him at Upper Calarian drinking with Adlai (TSN, supra, pp. 18-19).

"Adlai confirmed Marilyn's testimony and added that he saw appellant in Lower Calarian at 7:00 in the morning of the incident in question. He asked him about the hammer he borrowed and appellant told him that it was in the house of Elizabeth Oglos where he was staying. Upon appellant's invitation, Adlai went with him to the house of Nonoy Espanola in Southcom Village where they drank two bottles of gin.

"They left Espanola's house at 3:00 in the afternoon and passed by the store of Clara Sabellano where appellant ordered another bottle of gin. Because he was very drunk, appellant made fun of a waitress married to a marine, which irritated Adlai who decided to leave him and take a tricycle.

"But appellant also boarded the tricycle and they proceeded to the house of Vicente Bandillon. Appellant left and Adlai joined Vicente, Tirso Bonhanong and Raul Santillan who were drinking. However, Adlai did not drink because he was already drunk. Appellant returned and Adlai confronted him anew about the hammer. Adlai eventually hit appellant with a glass on the chest. Appellant became angry. They parted ways and Adlai went to the house of his younger sister, arriving at 7:00 in the evening, and stayed there until he was fetched by Marilyn at 8:00 o'clock that same evening. Noticing Marissa's absence, they looked for her but were unable to find her (TSN, September 4, 1995, pp. 3-19).

"Marissa's playmate, Arzen Lyod Laurente, 7 years old, provided the missing link. He testified that at 5:00 in the afternoon of June 19, 1995, the day of the incident, he was playing marbles with Marissa. While playing, Arzen's mother told him to buy cooking oil at the store of his Aunt Mila. Marissa went with him. When they reached the store, Marissa and Arzen saw appellant and the latter gave Marissa P1.00 for candy. Arzen then went home with his father while Marissa was left in the store with appellant (TSN, August 30, 1995, pp. 9-15). When Arzen turned his head, he saw Marissa and appellant leaving the store. At that time, it was already dark but 'not so dark yet.' That was the last time Arzen saw Marissa alive (TSN, supra, pp. 18-19).

"Elizabeth Oglos revealed that appellant, who was her brother's close friend, arrived at her house on June 17, 1995, from Cagayan de Tawi-Tawi and asked if he could stay with her. She consented because she knew him. She

noticed that he was wearing a pair of yellow plastic slippers with thin and worn-out soles (Exhibits K and K-1). He then asked permission to go out and drink with his friends. However, he left his yellow slippers and instead used Elizabeth's pair of slippers which was thicker, with violet strap[s] and black upper portion[s]. On the strap of both slippers was the name 'Rambo' (Exhibits L and L-1). She identified the slippers found at the scene of the crime as her 'Rambo' slippers which she described as the pair used by appellant without her permission. When asked to wear the 'Rambo' slippers, the same perfectly fitted her feet while the yellow slippers appeared too big for her (TSN, August 31, 1995, pp. 32-41).

"Appellant returned to her house in the evening of June 17, 1995, but left again the following day, still using her slippers, and returned in the evening. On June 19, 1995, he again left he[r] house in the morning and returned about 7:00 in the evening to change his clothes. She did not notice if he was wearing her slippers. He did not sleep at Elizabeth's house that night and the following successive nights, June 20 and 21.

"However, Elizabeth saw him on June 21, 1995, at the house of their neighbor, Francisco Bandillon, where she told him that somebody was looking for him because a child was missing. Appellant denied having anything to do with it, but Elizabeth noticed that he was no longer wearing her slippers. When asked about her slippers, appellant replied that he lost them at Southcom when he had a quarrel with Adlai Mides. He returned on June 22, 1995, bringing his clothes which he got from Marilyn and Adlai, but again left and did not sleep there. He returned and slept there on June 23, 1995, and left early in the morning of June 24, 1995, to board a launch for Cagayan de Tawi-Tawi bringing his clothes with him, on the pretext that his brother had work for him there (TSN, supra, pp. 41-52).

"PO2 Jose RT Tortola confirmed that after receiving the report that a dead body was found inside the Domi[ni]can Compound, San Jose Road, Zamboanga City, he proceeded to the crime scene with two other policemen. They found the decomposed body of the victim sprawled on the floor in a supine position. Scattered near the victim's head were eleven pieces of marbles (Exhibit F). About ten to fifteen inches on her right side was a headband (Exhibit D). One of the slippers with [a] 'Rambo' mark was found outside the room, about ten meters away (Exhibits L; L-1) (TSN, September 1, 1995, pp. 4-14)."[5]

Version of the Defense

The defense, in the Appellant's Brief,[6] contests the above facts and alleges denial as follows:

"Hilda Paalisbo testified that Isidro Mijares went to her house in the evening of June 19, 1995 and slept there. Isidro was wearing slippers then. (TSN, pp. 1-16, September 11, 1995)

"Cesario Mijares testified that he is the elder brother of Isidro Mijares. Isidro was arrested because he (Isidro) was being suspected of kidnapping a child. (TSN, pp. 16-36, September 11, 1995)

"Isidro Mijares testified that he and Adlai had a drinking spree in the morning of June 19, 1995 till 3:00 o' clock in the afternoon of the same date. At about 6:30 p.m. of the said date, they parted ways. He (Isidro Mijares) slept in the house of Hilda Paalisbo. He denied [having] taken Marissa Aguilar. (TSN, pp. 1-59, September 12, 1995)"[7]

The Ruling of the Trial Court

In convicting appellant, the trial court held that "although there is no direct evidence in the case at bar proving that it was accused Isidro Mijares who killed Marissa Aguilar x x x circumstantial evidence will support a judgment of conviction if: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt."[8] The following are the particular circumstances that led the trial court to conclude that it was indeed

Appellant Isidro Mijares who had killed Marissa Aguilar:

"x x x [T]hat Isidro Mijares is known to the victim[,] Marissa Aguilar; that he was asked by the victim's mother and stepfather to leave the house after staying for one week with them; that he borrowed the hammer of Adlai (Dodong) Mides, the victim's stepfather, and brought it to Cagayan de Tawi-Tawi without permission for which Adlai Mides got angry at him; that before they parted in the evening of June 19, 1995, Adlai Mides hit Isidro Mijares with a glass (baso) on the chest for which Isidro got mad; that Isidro was last seen with Marissa Aguilar on the evening when she disappeared; the fact that Isidro did not sleep in the house of Elizabeth Oglos in the evening of June 19, 20, 21, and 22, 1995; that when Marilyn Aguilar saw him walking in Sta. Catalina in the morning of June 21, 1995, Isidro was about to run but did not when he saw that Marilyn's companion was a woman; that he left for Cagayan de Tawi-Tawi in the morning of June 24, 1995 notwithstanding the fact that he was a suspect in connection with the loss of Marissa Aguilar; the fact that the slippers (Exh. 'L' ; 'L-1') belonging to Elizabeth Oglos which Isidro Mijares used without asking permission on June 17, 1995 was found near the dead body of Marissa Aguilar in an abandoned house at the vicinity of the Dominican Convent near the BBC (Baliwasan Commercial Complex); and the fact that Isidro Mijares is familiar with the said vicinity as he worked for one (1) month at the BBC together with Adlai (Dodong) Mides, the victim's stepfather x x x." [9]

These facts were duly proven and, taken together, established beyond reasonable doubt that Accused Isidro Mijares was guilty of murder qualified by treachery. [10] The killing of a child is treacherous per se.

Hence, this appeal. [11]

Assignment of Errors

Assailing the trial court's Decision, appellant alleges:

I

"The court a quo erred in giving much credence to the evidence brought forth by the prosecution.

II

"The court a quo erred in not acquitting the accused-appellant of the crime charged in spite of the presence of reasonable doubt favoring his eventual absolution therefrom." [12]

The Court's Ruling

The appeal is meritorious.

Main Issue:

Sufficiency of Circumstantial Evidence

Section 4, Rule 133 of the Rules of Court provides: "Circumstantial evidence is sufficient for 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 a conviction beyond reasonable doubt."

The prosecution sought to establish appellant's culpability through the following circumstances: (1) appellant used to stay in the victim's home; (2) appellant was asked to leave said house, causing him to get angry with the victim's mother and stepfather; (3) on June 19, 1995, in an altercation with appellant, the victim's stepfather hit the former's chest with a drinking glass; (4) appellant was the last one seen with the victim on the night she disappeared; (5) appellant, who had stayed in the house of Elizabeth Oglos, on two consecutive nights immediately prior to the killing, henceforth stopped sleeping there; (6) two days after Marissa's disappearance, when the victim's mother saw appellant, he made a move to run away but upon seeing that her companion was "only a woman, confronted her instead"; (7) the slippers that appellant borrowed from Elizabeth Oglos were found near the victim's dead body; (8) appellant was familiar with the place where the victim's dead body was found;

and (9) knowing that he was a suspect in the disappearance of Marissa Aguilar, appellant suddenly left for Cagayan de Tawi-tawi on June 24, 1995.

This Court, however, cannot sustain the conviction of the appellant. To our mind, the totality of the circumstantial evidence does not "constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to accused as the guilty person, to the exclusion of all others." [13]

Lest it be forgotten, the Constitution dictates that the accused must be presumed innocent. Hence, if the circumstances are capable of several interpretations, one of which is consistent with the innocence of the accused and the others consistent with his guilt, then the evidence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction. [14]

In the present case, the circumstances are subject to two antithetical interpretations, one of guilt and the other of innocence. In other words, the pieces of circumstantial evidence presented do not inexorably lead to the conclusion that appellant is guilty.

The two most damning pieces of circumstantial evidence crucial to the prosecution's case are: appellant was the last person seen with the victim, and his slippers were found at the crime scene. Neither one or both in combination with the others prove with moral certainty that the appellant was the culprit.

That appellant was the last person seen with the victim on the night she disappeared does not necessarily prove that he killed her. It was not established that appellant and the victim were together until the crime was committed. It was not even shown that the appellant proceeded to the crime scene, either by himself or together with the victim.

Likewise, the fact that the slippers which appellant borrowed from Elizabeth Oglos were found near the victim's dead body does not necessarily prove that he was the perpetrator of the crime. Even if we were to conjecture that appellant went to the locus criminis and inadvertently left them there, such supposition does not necessarily imply that he had committed the crime. Indeed, it was not established whether appellant went to that place before, during or after the commission of the crime, if at all. Moreover, the prosecution has not ruled out the possibility that the slippers may have been brought by another person to the crime scene, precisely to implicate him and thus exonerate the real culprit. Clearly, several antithetical propositions may be inferred from the presence of the slippers at the crime scene, and appellant's guilt is only one of them.

Equally inconclusive is the prosecution's assertion of appellant's flight. The prosecution points out that appellant, who had stayed in the house of Elizabeth Oglos on two consecutive nights immediately prior to the killing, did not return to the house after the commission of the crime. As mentioned earlier, even though he knew that he was a suspect in the disappearance of Marissa Aguilar, he still suddenly left for Cagayan de Tawi-tawi.

The conduct of the appellant does not show his guilt beyond reasonable doubt. In the first place, appellant was not a resident of Zamboanga City; hence, his departure for Cagayan de Tawi-Tawi on June 24, 1995 to attend to an unfinished task is hardly irregular. Moreover, appellant had also stayed with several other persons during his other visits to the city. Having slept in Elizabeth's house for two days after his arrival in Zamboanga City, it was possible that he wanted to see his other friends there, such as Hilda Paalisbo, one of those with whom he had stayed during his previous visits.

Marilyn alleged that, two days after the victim's disappearance, appellant was about to run away from her when she saw him. But such behavior ceases to be suspicious when one considers that appellant agreed to go with her to the police station, so that he could answer certain questions regarding Marissa Aguilar's disappearance.

Motive to Kill

The trial court also cited two particular circumstances to show that appellant had a motive to commit the crime: first, appellant was allegedly asked to leave the victim's house during one of his previous visits; and second, appellant had an altercation with the victim's stepfather while they were drinking on the afternoon of June 19, 1995.

This Court, however, finds the above circumstances insufficient to impel the appellant to kill Marissa Aguilar. That he was infuriated by the victim's parents and that he continued to bear such sentiment to the point of wanting to kill the girl were not supported by the evidence. Aside from the fact that said leaving had occurred several months prior to the killing, appellant and the victim's stepfather, Adlai Mides, even went on a drinking spree together. In any event, we believe that the alleged motives are not serious enough to induce a person to commit so grievous a crime.

Analogous Cases

In *People v. Ragon*,^[15] the trial court convicted appellant of murder, based on these circumstances: he and his companions were the last persons seen with the victim, and the cap worn by Ragon's companion was found beside the victim's dead body. The trial court further stated that Ragon conspired with the other accused to kill the victim, because the latter had initially refused to transport them to San Julian. However, this Court found that the circumstantial evidence presented did not conclusively point to Ragon as the perpetrator of the murder. The presence of the cap of Ragon's companion beside the dead body only proved that said person, not necessarily Ragon himself, was at the locus criminis. That such cap was found in the vicinity of the crime scene did not necessarily imply that the accused killed the victim.

In *People v. Binamira*,^[16] the trial court convicted the accused based on the following pieces of circumstantial evidence: (1) he was accosted by security guards near the crime scene; (2) he was walking suspiciously fast; (3) bloodied clothes were allegedly recovered from him. Appellant therein was acquitted because "the evidence, in view of the constitutional presumption of innocence, has not fulfilled the test of moral certainty and was thus insufficient to support a conviction."

Indeed, this Court has ruled that a person cannot be held liable for the killing, unless all the proven circumstances point to his guilt:

"Parenthetically, when the prosecution's case is anchored only on circumstantial evidence, all the circumstances must be consistent with the hypothesis that the accused is guilty of the crime sought to be proven, and no other. In addition, the circumstances under consideration must not support any rational hypothesis consistent with the innocence of the accused."^[17]

In the present case, Appellant Mijares enjoys the presumption of innocence. The pieces of circumstantial evidence relied upon by the trial court do not pass the test of moral certainty, as they admit of the alternative inference that another person or persons, not necessarily the appellant, may have killed Marissa Aguilar. Where the evidence admits of two interpretations, one of which is consistent with guilt, and the other with innocence, the accused must be acquitted. This, we do in the instant case.

In view of the foregoing, the Court finds no need to discuss appellant's other arguments.

WHEREFORE, the appeal is hereby GRANTED. The assailed Decision is REVERSED and SET ASIDE. Appellant is ACQUITTED on reasonable doubt. Unless convicted of any other crime or detained for some lawful reason, Appellant Isidro Mijares is ORDERED RELEASED immediately. The director of prisons is hereby DIRECTED to inform this Court, within five days from notice, of the date and time the appellant is released

pursuant to this Decision.

SO ORDERED.

Davide, Jr. (Chairman), Vitug, and Quisumbing, JJ., concur.
Bellosillo, J., please see dissenting opinion.

[1] Penned by Judge Jesus C. Carbon, Jr.

[2] Records, p. 14.

[3] Appealed Decision, p. 24; rollo, p. 36.

[4] The Appellee's Brief was signed by Solicitor General Romeo C. De la Cruz, Assistant Solicitor General Carlos N. Ortega and Solicitor Benilda A. Tejada.

[5] Appellee's Brief, pp. 3-12; rollo, pp. 115-124.

[6] The Appellant's Brief was signed by Froilan L. Valdez of the Public Attorney's Office.

[7] Appellant's Brief, p. 4; rollo, p. 59.

[8] Assailed Decision, pp. 16-17; rollo, pp. 28-29.

[9] Assailed Decision, p. 22; rollo, p. 34.

[10] Ibid., p. 23; rollo, p. 35.

[11] The case was deemed submitted for resolution on July 15, 1998, upon receipt by the Court of appellant's Manifestation in lieu of a Reply Brief.

[12] Brief for the Accused-Appellant, p. 1; rollo, p. 56.

[13] People v. Ragon, GR No. 100593, pp. 8-9, November 18, 1997, per Panganiban, J.

[14] People v. Binamira, 277 SCRA 232, August 14, 1997.

[15] Supra.

[16] Supra.

[17] People v. Llaguno, GR No. 91262, 22, January 28, 1998, per Panganiban J.

DISSENTING OPINION

BELLOSILLO, J.:

A litany of circumstantial evidence impels me to disagree with the majority opinion. I find the two most damning pieces of evidence presented against accused-appellant Isidro Mijares really damning and more than sufficient to incriminate him and establish his guilt beyond reasonable doubt.

The victim, 6-year old Marissa Aguilar, was playing marbles with 7-year old Arzen Lloyd Laurente when the latter's mother told him to buy cooking oil from a nearby store. Marissa Accompanied Arzen. At the store they met accused-appellant Isidro Mijares, a friend of Marissa's mother, Marilyn, and her live-in partner Adlai Mides. Arzen recounts the casual meeting at the store thus[1] -

FISCAL NUAL CONTINUING -

Q:

Now, Lloyd, on June 19, 1995 at around 5:00 o'clock in the afternoon where were you?

A:

We were there, in the old truck x x x

x x x x x x x x

Q:

While you were there in that old truck, was there anybody who went with you?

A:

Yes.

Q:

Who is (sic) this person?

A:

It was Isidro who approached us.

Q:

Before this Isidro approached you, what were you doing, Lloyd?

A:

We were playing (with) Maris because Tonton went home.

x x x x x x x x

Q:

Now, while you were playing, what happened Lloyd?

A:

I was told by my mother to buy cooking oil and Maris also told me that, "we will get out from this place because there are plenty of ants", then I proceeded to a store, I went to the store of auntie Mila to buy cooking oil and in that place, that was the time I saw Isidro.

Q:

Were you able to reach the store of auntie Mila?

A:

Yes.

Q:

Were you able to buy cooking oil?

A:

Yes.

Q:

Now this Marissa, did she go with you in (sic) the store?

A:

Yes.

Q:

Do you know this Isidro?

A:

Yes.

Q:

Now, will you please look around and tell us if this Isidro is in Court?

A:

Yes.

Q: Will you please point to him?

COURT:

Go to him and touch him.

A:

(Witness pointed to a person going down from the witness stand and touched the accused, when accused was asked his name, he identified himself as Isidro Mijares).

FISCAL NUVAL CONTINUING -

Q: Now, after buying the cooking oil, what happened to Maris?

A: She went with Isidro, and we also went home.

Q: You went home alone?

A: No, I was together with my father.

x x x x x x x x

FISCAL NUVAL CONTINUING -

Q:

Did this accused talk to Maris while you were in the store?

A:

Yes.

Q:

What did the accused tell Maris

A:

Isidro gave money to Maris.

Q:

And did the accused buy in that store?

A:

No.

Q:

Did you see the accused and Maris going away from the store?

A:

No, I was in the house.

COURT:

But you said Isidro gave money to Maris?

A:

Yes.

COURT:

How much?

A:

P1.00.

COURT:

What for?

A:

To buy candy.

COURT:

After Isidro gave Maris money, what happened?

A:

After that I was called in the house and we were there together with Tonton watching television.

COURT:

When you left, where was Maris?

A:

She was in the store.

COURT:

With whom?

A:

Isidro.

COURT:

You said Maris went with Isidro?

A:

Yes, Your Honor.

COURT:

Where?

A:

Leading outside.

COURT:

Leading to where?

A:

I do not know Your Honor.

COURT:

But you said you already went home?

A:

Yes, Your Honor.

COURT:

So, when you went home, where was (sic) Maris and Isidro?

A:

They are (sic) still in the store but they are (sic) about already to walk or get(ting) away in (sic) the store.

COURT:

Towards what direction?

A:

I do not know Your Honor.

COURT:

Proceed.

x x x x x x x x

FISCAL NUVAL CONTINUING -

Q:

When they were walking, (were they walking) towards your house or away from your house?

A:

They were walking away from the house.

COURT:

Did Isidro talk to Maris?

A:

Yes, Your Honor.

COURT:

Did you hear what they were talking about?

A:

I did not, Your Honor.

COURT:

Proceed.

FISCAL NUVAL CONTINUING -

Q:

What about Marissa, did she talk to Isidro?

A:

Yes.

Q:

What did Maris tell Isidro?

A:

I do not know.

x x x x x x x x

COURT:

How long have you known Maris?

A:

I knew her for quite (a) long time.

COURT:

How old is she?

A:

Six years old.

COURT:

Younger than you?

A:

Yes.

COURT:

Is she going to school?

A:

Yes.

COURT:

Where?

A:

Central School.

COURT:

Is her house near your house?

A:

Yes.

COURT:

Proceed.

FISCAL NUVAL CONTINUING -

Q:

How far is their house to your house?

A:

It is just near.

COURT:

You said you have not seen Maris anymore?

A:

Yes.

COURT:

Where was she, the last time you saw her?

A:

In the store.

COURT:

With whom?

A:

With Isidro.

COURT:

Was (sic) she and Isidro the only persons in that store?

A:

Yes.

COURT:

What time was that, more or less?

A:

It is (sic) already night time.

COURT:

It was already dark?

A:

Yes.

COURT:

Proceed.

FISCAL NUVAL CONTINUING -

Q:

Now, you said before they were about to leave the store, did you see Isidro holding the hands of Maris when they were about to leave the store?

A:

Yes.

Q:

Did you actually see them leaving the store?

A:

Yes, because I turned my face.

Q:

And while they were walking, Isidro was holding the hand of Maris, is that correct?

A:

Yes.

Q:

And that was the last time you saw Maris alive?

A:

Yes.

COURT:

At that time, according to you, it was already dark?

A:

Yes.

COURT:

Proceed.

FISCAL NUVAL CONTINUING -

Q:

Was it dark already or not yet?

A:

It is (sic) not so dark yet.

Q:

So, it must be around 6:00 o'clock in the evening?

A:

Yes.

COURT:

Do you know where is Maris now?

A:

She is in heaven.

Although it is almost dark, Marissa did not go home with her playmate Lloyd; instead, she tarried with accused-appellant whom she addressed as "Uncle," who gave her P1.00 to buy candy, held her hand and led her to a direction away from her home. Considering that it was accused-appellant who was last seen walking with Marissa, even holding her hand, he must have been the one who brought her to the place where she was eventually found lifeless, as they were earlier seen heading towards that direction. Although this is denied by accused-appellant, I would believe 7-year old Arzen who clearly narrated his last few moments with Marissa who was later found dead after seven (7) days. This is consistent with the autopsy report that Marissa had been dead for five (5) to seven (7) days when her decomposed body was discovered.

Why should accused-appellant now deny even his presence at the store that late afternoon of 19 June 1995, and his meeting Marissa and Arzen? Why should he deny that he held the hand of Marissa while walking towards the direction where she was later found dead?

Another very incriminating evidence against accused-appellant was the pair of slippers found near the body of the victim at the locus criminis. According to prosecution witness Elizabeth Oglos, this pair of slippers was the very pair that accused-appellant took from her on 17 June 1995 when he arrived from Cagayan de Tawi-tawi. When he left her house the day he got the slippers, he also left behind his worn-out yellow slippers. He was even wearing it the following day or for two (2) days prior to the killing.

Again, accused-appellant denied having worn this pair of slippers, claiming that he had his own. But, as witness Oglos explained, while he had a pair of yellow slippers, they were already worn-out and thin at the soles, so he took her slippers. Oglos even produced in court the pair of yellow slippers she referred to as that belonging to accused-appellant, now marked Exh. "K" and "K-1." Of course, the accused-appellant denied this fact and claimed that he had a pair of fairly new spartan slippers with green straps. He did not however produce this pair in court nor account for its whereabouts, to prove his allegation.

It is argued in the majority opinion that even if accused-appellant was actually at the crime scene and accidentally left his slippers there, it cannot be firmly inferred that he committed the murder as it was possible that that pair of slippers could have been taken by someone else and placed near the cadaver to implicate him.

Oglos' pair of slippers which accused-appellant took from her and later found near the lifeless body of the victim was described by Oglos as follows -

PROSECUTOR NUVAL -

x x x x x x x x

Q:

Will you please describe to us your slippers which he wore that day, on June 17, 1995?

A:

It's a RAMBO slippers unlike these slippers, it is thicker. The upper portion of the slippers are black. "Itum ang tumbanan."

Q:

And then?

A:

The color of the strap is violet.

Q:

Not blue?

A:

No, it's violet.

Q:

Okey. What else?

A:

At the side, there is a "bangag" (hole) at the side.

COURT:

Q:

Which side? Right or left?

A:

Left slipper.

PROSECUTOR NUVAL:

Q:

Will you be able to identify that if shown to you Madam witness?

A:

Yes.

x x x x x x x x

PROSECUTOR NUVAL:

Q:

What is the trade mark of that slippers?

A:

RAMBO. On the strap, there is the name "RAMBO".

COURT:

Q:

Straps of both slippers?

A:

Yes.

PROSECUTOR NUVAL:

Q:

Now, I show you Madam Witness, two (2) slippers. Tell us if these are the slippers that were taken, whether or not, that is (sic) your slippers which were taken by the accused?

A:

Yes.

Q:

Why do you say that this is the one?

A:

I was the one who bought the slippers.

Q:

Where is the hole you are telling us?

INTERPRETER:

Witness indicating the right portion of the left slipper.

COURT:

There is the word "RAMBO" on the straps of both slippers.

PROSECUTOR NUVAL:

And the strap is colored.

COURT:

More of violet but it looks dark blue.

x x x x x x x x

COURT:

Can you try wearing your slippers?

PROSECUTOR NUVAL:

Can we just manifest

COURT:

It's very important. This is a very important case. Can you just let her try wearing it. This is a very important case.

PROSECUTOR NUVAL:

We will ask her to fit.

x x x x x x x x

COURT:

It fits?

INTERPRETER:

Yes, Your Honor, it fits the feet of the witness, both feet of the witness.

PROSECUTOR NUVAL:

So, we request that these be marked as Exhibits "L" and "L-1".

COURT:

Q:

So, you used that for one (1) month before June 17?

A:

Yes, Your Honor.

Accused-appellant denied ownership of the worn-out yellow slippers and that he used Oglos' slippers. He claimed that he wore a pair of spartan slippers with green strap and white top when he arrived in Zamboanga City on 17 June 1995. These green slippers were allegedly bought for him by his brother Cesario.[2]

In an attempt to discredit the account of Oglos regarding the two (2) pairs of slippers he used, accused-appellant testified[3] -

ATTY. LIM:

Q:

Now, Elizabeth Oglos, claims that on June 17, 1995, on the day of your arrival, you borrowed from her a pair of slippers colored blue, marked by the Prosecution as Exhibit "L" and "L-1"

x x x x x x x x

Q:

Elizabeth Oglos claims that you got a pair of slippers colored blue on June 17, 1995. What can you say about this?

A:

Well, I did not get it. I should not get it because I have my own, why will I get it because I have my own slippers?

Q:

Now, she also identified another pair of slippers colored yellow, marked as Exhibit "K" and "K-1", which she claims that it was yours. What can you say about that?

A:

Well, that is not my slippers. If that is (sic) my slippers, I should have brought it to Cagayan de Tawi-Tawi.

COURT:

So, if that is not yours, will you try to wear it. Where is (sic) the slippers? You get it. Offered already?

PROSECUTOR NUVAL:

Yes, offered already, Your Honor.

COURT:

Will you go down.

(WITNESS WENT DOWN FROM THE WITNESS STAND AND TRIED TO WEAR THE SLIPPERS)

PROSECUTOR NUVAL:

Exactly, I would like to manifest for the record Your Honor, that this yellow slippers fit.

ATTY. LIM:

Although... Manifestation. There is a different of about one half (1/2) inch Your Honor.

COURT:

From the tip?

ATTY. LIM:

From the heels Your Honor, 1/2 inch.

COURT:

Will you measure it Mr. Alber. Although when we buy slippers we usually have a little allowance. Because if it really fits on the edge you are liable to get dirt on the heel.

INTERPRETER:

(Measuring) one half (1/2) inch.

PROSECUTOR NUVAL:

And, the sole Your Honor, fits the thin portion of the slippers.

COURT:

Now, I cannot say if the blue slippers will fit you. We are not violating the constitutional rights of the accused if the accused can be asked to fit slippers on, is it not Fiscal?

PROSECUTOR NUVAL:

Yes, Your Honor.

(AT THIS JUNCTURE, THE WITNESS WAS ASKED TO FIT THE BLUE SLIPPERS)

PROSECUTOR NUVAL:

Yes, it fits Your Honor.

ATTY. LIM:

Although, Your Honor, the fingers of the toes when asked to fit the slippers, a little bit extended the edge of the slippers (sic).

COURT:

The toes goes (sic) beyond it.

ATTY. LIM:

Beyond the edge, full edge of the slippers.

COURT:

Well, that is not really his. Now, will you try comparing the length and the sizes of the yellow slippers and the blue slippers whether that is really that of Oglos.

(PROSECUTOR NUVAL COMPARING)

The yellow slippers is longer.

COURT:

Will you measure the edge length?

(INTERPRETER MEASURING)

One (1/2) (sic) inch.

COURT:

Q:

Where is now that green slippers, your slippers with green straps and the upper portion white? Where is that?

A:

Well, when I arrived here Your Honor, when I was in the wharf, I was mauled and I was being thrown from one another (sic) and then, my slippers, I was able to leave my slippers in the wharf.

In this case, although accused-appellant insisted that he did not use either the yellow slippers or the Rambo slippers referred to by Oglos, the physical evidence serves as a mute but eloquent manifestation of the truth which rates high in our hierarchy of trustworthy evidence.[4] When accused-appellant was made to fit the worn-out yellow slippers in court, they fitted his feet to a "T". His soles exactly suited the thinning portions of the slippers. But when he put on the Rambo slippers, his toes went beyond the edges of the footwear. Notably when Oglos was asked to wear the Rambo slippers, the trial court observed that they fitted her feet perfectly.

Quite telling is the fact that when the trial court questioned accused-appellant about the whereabouts of the green slippers, which he claimed to be the only pair he wore since March 1995, accused-appellant simply answered that he had left them in the wharf after he was mauled there.[5] Similarly, when Oglos asked him why he was no longer wearing her Rambo slippers, he told her that the slippers had gotten lost when he quarrelled with the victim's stepfather, Adlai Mides.[6] Such evasive answers only serve to weaken accused-appellant's protestations of innocence.

Arguably, the two circumstances pointed out when taken in isolation may be susceptible of several propositions that are both compatible and incompatible with accused-appellant's guilt. However, when we carefully link these two with the other facts as proved by the prosecution and considered as badges of truth by the trial court, a solid case for murder is established against him.

As correctly ruled by the court a quo, the prosecution was able to establish an unbroken chain of circumstantial evidence pointing to the guilt of accused-appellant beyond reasonable doubt. He was known to the victim Marissa and her family. He was told by Marissa's mother, Marilyn Aguilar, and stepfather, Adlai Mides, to leave their house after staying with them for one (1) week. Accused-appellant took the hammer of Adlai Mides and brought it with him to Cagayan de Tawi-Tawi without Adlai's permission. In the evening of 19 June 1995, accused-appellant and Adlai quarrelled because of the hammer the former took, with Adlai hitting him on the chest with a glass which angered him. The victim was last seen alive with accused-appellant on the night she disappeared.

Accused-appellant did not sleep in the house of Elizabeth Oglos where he was expected to stay in the evening of 19, 20, 21 and 22 June 1995. When Marilyn saw accused-appellant walking in Sta. Catalina in the morning of 21 June 1995 he started to run but stopped when he saw that her companions was only another woman. He left for Cagayan de Tawi-Tawi in the morning of 24 June 1995 when he learned that he was a suspect in connection with the disappearance of Marissa Aguilar. The Rambo slippers of Oglos which accused-appellant wore on 17 June 1995 were found near the dead body of the victim in an abandoned house near the Dominican Convent with which he was familiar as he and Adlai worked together for one (1) month at the Baliwasan Commercial Complex (BCC) within the vicinity of the Dominican Convent.[7]

Moreover, the two (2) prosecution witnesses, namely, 7-year old Arzen Lloyd Laurente and Elizabeth Oglos, who provided the two most damning pieces of circumstantial evidence for the prosecution's case, to borrow the phrase from the majority opinion, cannot be imputed with any ill motive to falsely testify against accused-appellant.

Hence, in the absence of any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive existed and their testimonies are thus worthy of full faith and credit.[8]

Finally, accused-appellant would convince us of his innocence because he agreed to go with the victim's mother to the police station to answer certain questions regarding Marissa's disappearance. It only bears repeating that there is no law, rule or dictum which holds that the non-flight of an accused is conclusive proof of his innocence.[9]

WHEREFORE, with due respect to the majority, I vote for the AFFIRMANCE of the 8 April 1996 Decision of the RTC-Br. 16, Zamboanga City, finding accused-appellant ISIDRO MIJARES guilty of MURDER.

[1] TSN, 30 August 1995, pp. 9-11, 13-19.

[2] TSN, 12 September 1995, pp. 6-7.

[3] TSN, id., pp. 27-32.

[4] People vs. Vasquez, G.R. No. 102366, 3 October 1997, 280 SCRA 160, 175, citing People v. Uycoque, 246 SCRA 769, 779 (1995).

[5] See Note 8 at p. 31.

[6] See Note 4 at p. 45.

[7] RTC Decision, p. 22; Rollo, p. 34.

[8] People v. Agunias, G.R. No. 121993, 12 September 1997, 279 SCRA 52, 65, citing People v. Malazarte, 261 SCRA 482, 491, 6 September 1996.

[9] People v. Pareja, G.R. No. 88043, 9 December 1996, 265 SCRA 429, 441, citing People v. Desalisa, 229 SCRA 35, 4 January 1994.⁹

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