THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO PLANA ALIAS “CATONG” EDGARDO PERAYRA, RENE SALDEVEA AND RICHARD BANDAY, DEFENDANT-APPELLANTS.

G.R. No. 128285. November 27, 2001

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PER CURIAM:

This is an automatic review of the decision of the Regional Trial Court, Branch 15 of Roxas City in Criminal Case No. 4659 finding accused-appellants Antonio Plana, Edgardo Perayra, Rene Saldevea and Richard Banday guilty beyond reasonable doubt of the crime of Rape with Homicide and imposing upon them the supreme penalty of Death.

The Information filed against accused--appellants reads:

> That on or about 10:30 o'clock in the morning of September 23, 1994, at Brgy. Cubi, Dumarao, Capiz, and within the jurisdiction of this Court, the above-named accused did, then and there, wilfully and feloniously, and by conspiring and helping one another, gang-up and have carnal knowledge of HELEN PIROTE [should read Helen Perote]. will, and, thereafter, by means of cruelty which augmented her suffering, did, then and there, strike, mangle and stab said HELEN PIROTE several times with both blunt and sharp-edged weapons thereby inflicting upon her serious multiple wounds causing massive hemorrhage which resulted to [sic] her death.[1]

At their arraignment, accused-appellants pleaded not guilty. During the trial, the prosecution presented as its witnesses Dr. Ricardo Betita, Jr., Felix Lagud, Rene Bustamante, Antonio Mendoza, Amalia Rafael, Linda Perote and Romeo de la Torre Diaz. Their testimonies, taken together, establish that:

On September 26, 1994, the victim, Helen Perote, was found dead by her brother and the police in Brgy. Cobe, Dumarao, Capiz. The body was in prone position and was already in an advance state of decomposition. Per the post mortem examination conducted by Dr. Ricardo Betita, Rural Health Officer of Cuartero, Capiz, the victim sustained the following injuries:

- Clean edges stab wound 2x5 cm left anterior chest.
- Avulsion with irregular edges wound 8x12 cm middle chest area.
- Avulsion of the nose and upper lip portion/area.
- Clean edges wound or stab wound 2x5 cm epigastric area.
- Clean edges stab wound 2x5 cm left hypogastric area.
- Clean edges stab wound 2x5 cm hypogastric area.
- Clean edges stab wound 2x5 cm left posterior upper back.

- Clean edges stab wound 2x5 cm mid upper portion of the back.

- Clean edges stab wound 2x5 cm left posterior back level of 8th ribs.

- Clean edges stab wound 2x5 cm left back level of left lumbar area.

- Clean edges wound 2x5 cm middle low back area.

- Clean edges wound 2x5 cm right low back area at level of lumbar area.

- Clean edges wound 2x5 cm left gluteal area near the anus.

- Vagina: Introitus can easily insert 2 fingers/Hymen with laceration 3 and 9 o'clock (old laceration) and on the state of decomposition.

The most probable cause of death was massive hemorrhage or blood loss secondary to multiple stab wound[s].[2]

When he took the witness stand, Dr. Betita described the fourteen (14) wounds inflicted on the victim as follows: Wound No. 1 was located just above the left breast of the victim. It was seven (7) to nine (9) centimeters deep. It was a fatal wound as it hit the heart of the victim. Wound No. 2 was located in the middle chest area of the victim. Wound No. 3 was an avulsion on the nose and upper lip. There was also a missing tooth. The wound could have been caused by a hard object or that the victim fell with her face hitting the ground. Wound No. 4 was a stab wound located at the upper part of the abdomen. It was seven (7) centimeters deep and was probably caused by a knife or a bladed instrument. Wound No. 5 was a stab wound located at the left side above the pubis area. Wound No. 6 was a stab wound located above the pubis area also. It was seven (7) to ten (10) centimeters deep. The urinary bladder and the uterus could have been hit by this wound. Wound No. 7 was a stab wound and located at the right scapular area of the body. With a depth of seven (7) centimeters, the wound hit the lungs of the victim. Wound No. 8 was a stab wound and located at the upper back portion. It could have affected the spinal cord causing paralysis. Wound No. 9 was a fatal stab wound located at the left posterior back level of the 8th rib. The wound could have affected the spinal cord, the lungs and the abdominal "aorta." Wound No. 10 was located at the left lumbar area which could have hit the kidney of the victim. Wound No. 11 was located at the middle low back area. Wound No. 12 was located at the middle portion of the back just above the right lumbar area. Wound No. 13 was located near the anus. The wound was inflicted with the victim facing downward or the assailant was at the back of the victim. Finally, Entry No. 14 was the laceration on the hymen of the victim's sexual organ.[3]

According to Dr. Betita, the victim died more than seventy-two (72) hours already before the police authorities found her body.[4]

On September 23, 1994, or three (3) days before the victim's body was found, at around 10:30 in the morning, Felix Lagud was walking at the feeder road in Barangay Cobe, Dumarao, Capiz. He just came from his farm in Alipasyawan, Dumarao and was on his way home to Poblacion Ilawod. A movement at about fifty meters to his left side caught his attention. He saw three persons who seemed to be wrestling. He came nearer so he would be able to see them more clearly. From about a distance of twenty (20) meters, he saw the three men holding a girl while another man was on top of her. The girl was being raped and she was later stabbed. Frightened that the assailants would see him, Lagud ran away. He intended to go straight home but when he passed by the house of Porferio Haguisan, the latter invited him for a "milagrosa." Lagud obliged and stayed at the house of his "kumpare" until 2:00 in the afternoon.[5]

On September 26, 1994, while he was in Ungon Ilaya, Lagud heard that a girl was found dead in Barangay Cobe. It was the same place where, three days earlier, he saw the four men gang up on the girl. He wanted to go to the

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place but he was told that the foul smell coming from the decomposed body already permeated the place. He later learned that the deceased was Helen Perote.[6]

In his affidavit,[7]as well as in his testimony in court, Lagud identified accused-appellants Plana, Perayra and Saldevea as the three men who were holding the girl while their fourth companion was raping her. At the time of the incident, he did not yet recognize the fourth man who was on top of the girl. However, when he saw accused-appellants at the municipal hall where they were brought when they were arrested on September 26, 1994, he identified the fourth man to be accused-appellant Banday.[8]

Rene Bustamante corroborated in part the testimony of Lagud. Between 10:30 to 11:00 in the morning of September 23, 1994, Bustamante was looking for his carabao. He found it near the fishpond owned by accused-appellant Saldevea in Barangay Cobe. Bustamante was tugging the carabao when he heard the sound of men laughing. When he looked back, he saw accused-appellant Saldevea, who was then shirtless, pull up his pants. Accused-appellant Saldevea were with three other men. They were washing their hands on the fishpond. Bustamante recognized one of them to be accused-appellant Perayra. Bustamante proceeded to his home in Barangay Ungon, Ilaya, Dumarao, Capiz.[9]

On September 25, 1994, Bustamante was in their house with his wife and children. His mother-in-law, Linda Perote, arrived looking for her daughter Helen. The wife of Bustamante is the older sister of Helen. They learned that Helen had been missing since September 23, 1994. She was supposed to go to the house of her other sister, Susan, but she (Helen) never reached the latter's place. They began to search for her. On September 26, 1994, they found her lifeless body with no clothes on but her panty. There were already maggots infesting her body. Bustamante confirmed in open court that accused-appellants were the men that he saw on September 23, 1994 near the place where the body of Helen was found.[10]

Antonio Mendoza, barangay captain of Barangay Hambad, Dumarao, Capiz and storeowner, narrated during the hearing that on September 23, 1994, at past 8:00 in the morning, accused-appellants arrived at his store. They bought two bottles of ESQ whisky and proceeded to drink the liquor. Accused-appellants were drinking in Mendoza's store until almost 10:00 in the morning. Thereafter, they left bringing with them the one-half full bottle of whisky that they did not consume.[11]

Two days after that incident, on September 25, 1994, Porferio Haguisan and members of the Regional Security of the Armed Forces (RSAF) came to see Mendoza to ask him if he saw accused-appellants. Mendoza told them that accused-appellants were in his store in the morning of September 23, 1994. Haguisan and the police left. The following day, Mendoza heard that Helen's body was found dead near the fishpond owned by the brother of accused-appellant Saldevea. The place is approximately 500 meters away from Mendoza's store.[12]

The last person who talked with the victim was her older sister Amalia Rafael. In the morning of September 23, 1994, Helen went to see Amalia to tell her that they were going to have a "milagrosa" in the house of their other sister, Susan. Amalia instructed Helen to go ahead. Helen then left to proceed to Susan's house. Going there, Helen would usually pass by the railway track and the feeder road. After Helen left, Amalia followed her to their sister's house. Amalia took the same route passing by the railway track and feeder road. On her way, Amalia met accused-appellants on the feeder road near the fishpond. At the time, she only knew accused-appellants Plana and Perayra. She noticed that the four men were not wearing any shirts but only their denim pants. They were obviously drunk as their faces were red and they walked in a zigzag manner. Amalia saw that accused-appellant Plana had a knife tucked in his waist.[13]

There were already many people when Amalia arrived at Susan's house. However, Helen was nowhere to be found. Amalia did not stay long there as she only got food. On September 25, 1994, while she was working in the

ricefield, their mother, Linda, came. She told Amalia that Helen had not come home. They then went to see Helen's classmates to ask them if they knew where she went. All they knew is that she went to a "milagrosa." On September 26, 1994, they found the body of Helen near the fishpond of accused-appellant Saldevea in Barangay Cobe, Dumarao, Capiz. Helen was then only eighteen years old.[14]

The Chief of Police of Dumarao Police Station, Romeo dela Torre Diaz, received report of Helen's disappearance in the afternoon of September 25, 1994. Later in the evening, he granted clearance to the 601st Mobile Force Company to conduct the search. The following day, upon hearing that the body of Helen was already found, Diaz went to the station of the 601st Mobile Force Company. Accused-appellants, who were already there, were turned over to him for investigation. Thereafter, Diaz went to the place where Helen's body was found in Barangay Cobe.[15]

Linda Perote, the victim's mother, described on the witness stand the shock, grief and anguish that she felt upon learning of her daughter's death. She averred that the family spent almost fifty thousand pesos (P50,000.00) for Helen's wake and burial.[16]

Upon the other hand, accused-appellants interposed the defense of denial and alibi. Their account of their activities on that fateful day of September 23, 1994 is as follows:

At around 7:30 in the morning, accused-appellants had "lomi" in the eatery owned by Eddie Pendon. After eating, they accompanied accused-appellant Saldevea to the public market to buy fish. From the public market, they all boarded a tricycle to go to Barangay Bugnay. When they alighted the tricycle, they met barangay captain Tony Mendoza. Mendoza boarded the tricycle while accused-appellants proceeded to Mendoza's store. Accused-appellants bought two bottles of whisky from the store. They drank the liquor at said store until past 10:00 in the morning.[17]

Thereafter, accused-appellants Plana and Banday had to leave behind accused-appellants Saldevea and Perayra to go to the house of Plana's aunt and uncle, Vicente and Felomina Docutan. They reached the house of the Docutans at around 10:30 in the morning. It only took them a couple of minutes to get there by foot. Accused-appellants Plana and Banday were tasked to cook the chicken for the celebration that night. Also at the house of the Docutan couple was Nolan Obena. Accused-appellants Plana and Banday stayed there until 9:00 in the evening. Accused-appellant Banday slept over at the house of accused-appellant Plana since he (accused-appellant Banday) lived quite far.[18]

For their part, after accused-appellants Plana and Banday left the store, accused-appellants Perayra and Saldevea proceeded to the house of the latter's sister-in-law, Monina Saldevea. Accused-appellant Saldevea cooked the fish that they earlier bought in the public market. They then had lunch and after eating, they slept. Accused-appellant Perayra slept until 4:00 in the afternoon. Accused-appellant Saldevea woke up earlier and was soon outside the house plowing the field. Accused-appellant Perayra went home at 4:30 in the afternoon.[19]

To buttress their defense of denial and alibi, accused-appellants further accounted for their activities on the days subsequent to September 23, 1994. Accused-appellant Plana claimed that he spent the day gathering wood on September 24, 1994. The following day, he just stayed at their house but in the afternoon, he played basketball with accused-appellant Perayra and their friends. Later in the evening, at about 11:00, certain members of the RSAF came to the house of accused-appellant Plana. Accused-appellant Perayra was still there because he slept over at said house. The RSAF questioned them if they saw a girl named Helen Perote. They answered no. Accused-appellants Plana and Perayra then accompanied the law enforcers to see a certain "Lando." The authorities inquired from Lando if there was a woman who boarded his "bering" transportation. Lando answered in the negative. Accused-appellants Plana and Perayra were then instructed by the police to go to the police

detachment. Since it was already late, accused-appellants Plana and Perayra asked if they could just go there in the morning of the following day.[20]

Accused-appellant Perayra averred that he stayed at his house the whole day of September 24, 1994. The following day, he went to the house of accused-appellant Plana in the afternoon. They agreed to meet later in the evening at the wake in the house of the Igaras family. They left the wake at 10:00 in the evening. Accused-appellant Perayra decided to spend the night at the house of accused-appellant Plana. At 11:00 in the evening, they were awakened by the brother of accused-appellant Plana. They were informed that members of the RSAF were outside the house looking for them. Accused-appellant Perayra was brought in front of the house while accused-appellant Plana was brought at the back. Accused-appellant Perayra was asked of his whereabouts on September 23, 1994.[21]

Accused-appellant Banday recounted that he left the house of accused-appellant Plana early morning of September 24, 1994. He slept there the night before after they had dinner at the house of the Docutans. He never left his house on September 24 and 25, 1994. On September 26, 1994, he received word that the police chief wanted to ask him some questions. He thus went to the police detachment as instructed. He did not see the other accused-appellants when he arrived at the detachment. The authorities began interrogating him. They wanted him to confess to the killing and raping of Helen. When he refused, they punched him. Later in the afternoon, the four accused-appellants were brought to the municipal hall in Dumarao, Capiz. They were placed under detention there.[22]

Aside from accused-appellants, the defense presented other witnesses, namely, Julia Barrientos, Nolan Obena, Igleserio Farinas, Rolando Naelgas and Monina Saldevea. Barrientos tried to refute the allegation of prosecution witness Felix Lagud that he saw accused-appellants rape and stab Helen in Barangay Cobe. Barrientos testified that on September 23, 1994, at 10:00 in the morning, on her way to the public market, she saw Lagud sitting on the bench outside his house. Lagud was then selling "amakan," hence, he could not have seen what he claimed he saw.[23]

Obena corroborated the alibi of accused-appellants Plana and Banday that from 10:30 in the morning to 8:00 in the evening on September 23, 1994, they were at the house of the Docutan couple.[24] Farinas, a basket vendor, said during his testimony that he saw accused-appellant Plana and his two companions at around 10:30 in the morning of that fateful day. They passed by the house of Ronie Saldevea, brother of accused-appellant Saldevea, where Farinas was buying baskets. He (Farinas) even had a short conversation with accused-appellant Plana. Farinas saw accused-appellant Plana and his companions head towards Barangay Cobe.[25] Naelgas corroborated the testimony of Obena. Naelgas saw Obena when the latter bought baskets from Ronie. He (Naelgas) affirmed that accused-appellants Plana and Banday passed by the house of Ronie. They came from the direction of the nearby high school and went down the hill going to Barangay Cobe.[26]

Monina Saldevea, sister-in-law of accused-appellant Saldevea, corroborated the alibi of accused-appellants Saldevea and Perayra. She attested that on September 23, 1994, accused-appellants Saldevea and Perayra arrived at her house at 10:30 in the morning. They had their lunch there. Accused-appellant Saldevea helped prepare the same. Accused-appellant Perayra stayed at the house of Monina until 4:30 in the afternoon when he went home. On the other hand, accused-appellant Saldevea did not leave the house until September 25, 1994. The following day, he went to the detachment after he was informed by accused-appellant Perayra that the authorities wanted to investigate them for the death of Helen Perote.[27] Edith Perayra, mother of accused-appellant Perayra, averred that in the morning of September 23, 1994, her son asked permission from her to go to the public market. He told her that he was going there with accused-appellant Saldevea. When he got home at 5:00 in the afternoon, he told his mother that he ate lunch at the house of Monina Saldevea with accused-appellant Saldevea. Accused-appellant

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Perayra did not leave their house except to buy cigarettes in the afternoon of September 25, 1994. The following day, at 6:00 in the morning, accused-appellant Perayra reported to the police detachment after he learned that the authorities wanted to ask him questions. At the detachment, he was surprised to learn that be was one of the suspects in the rape-slaying of Helen. Accused-appellants were all brought to the municipal hall in Dumarao, Capiz where they were detained.[28]

Lagud was called again to the witness stand by the prosecution to rebut the testimony of Julia Barrientos, witness for the defense. Lagud admitted that he knows Barrientos but denied seeing her on September 23, 1994. According to Lagud, Barrientos' claim that she saw him selling "amakan" on that date is not true because he had already stopped said business in 1992.[29]

On November 23, 1996, after due trial, a judgment was rendered by the trial court finding accused-appellants guilty beyond reasonable doubt of the crime of rape with homicide. The trial court imposed upon them the supreme penalty of death. The dispositive portion of the trial court's decision reads:

> WHEREFORE, finding accused ANTONIO PLANA, EDGARDO PERAYRA, RENE SALDEVEA and RICHARD BANDAY guilty beyond reasonable doubt of the complex crime of Rape with Homicide as defined and punished under Art. 335 of the Revised Penal Code, as amended by Rep. Act No. 7659, judgment is hereby rendered sentencing them to suffer the supreme penalty of DEATH and, likewise, ordering them to pay jointly and severally the heirs of the victim, Helen Perote, twenty five thousand pesos (P25,000.00) as actual damages and fifty thousand pesos (P50,000.00) as civil liability.
>
> SO ORDERED.[30]

In their appeal brief, accused-appellants assail their conviction alleging that the trial court committed the following errors:

> - The trial court erred in not appreciating the defense of alibi/denial put up by the appellants they had nothing to do with the commission of the crime as their testimonies and their witnesses, individually and collectively taken together, showed with clarity and beyond doubt they were not at the scene of the crime and did not commit the offenses charged.
>
> - The trial court erred in not censuring the actuation of the police authorities in detaining appellants without benefit of Court filed information nor judicial order of detention as well as violation of their constitutional rights during their so-called custodial invitation and interrogation.
>
> - The trial court erred in not appreciating the inconsistencies and inherent weaknesses/improbabilities of the testimonies of prosecution's witness which showed tons of doubt of appellant's guilt entitling them to acquittal.[31]

Accused-appellants vigorously deny that they committed the rape and killing of Helen. They maintain that their testimonies, taken together with that of the other defense witnesses, show that they were not at the scene of the crime. In other words, they fault the trial court for not giving credence to their defense of alibi. Corollarily, they point out the alleged inconsistencies and improbabilities in the testimonies of the witnesses for the prosecution. Accused-appellants likewise denounce as violative of their constitutional rights their detention without, at the time, a judicial order or an information filed in court.

After a careful review of the evidence on record, the Court is constrained to affirm the judgment of conviction of accused-appellants.

The first and last issues raised by accused-appellants shall be addressed jointly as they both involve the assessment of the witnesses' credibility. It is well-entrenched in this jurisdiction that findings of the trial court on

the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. The trial court is in a better position to decide the question of credibility, having seen and heard the witnesses themselves and observed their behavior and manner of testifying.[32]

In this case, the trial court correctly gave credence to the positive identification of accused-appellants as the assailants of Helen by Felix Lagud. His testimony was straightforward, direct and consistent:

PUBLIC PROSECUTOR:

Q

Mr. Lagud, where were you at about 10:30 o'clock in the morning on September 23, 1994?

A

I was walking at the feeder road of barangay Cobe, Dumarao, Capiz.

Q

Where were you headed to?

A

Going home to Poblacion Ilawod.

Q

And this Poblacion Ilawod is also of Dumarao, Capiz?

A

Yes, sir.

Q

Where have you been?

A

I came from Alipasyawan, Dumarao, Capiz, visiting my farm.

Q

This Alipasyawan is also of Dumarao, Capiz?

A

Yes, sir.

Q

While walking in barangay road of Barangay Cobe, Dumarao, Capiz, was there anything unusual that attracted or called your attention?

A

Yes, mam.

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Q

What was that unusual incident that called your attention?

A

I saw that as if there were wrestling.

Q

On which part of the barangay road where you were walking that you saw there seems to be wrestling persons?

A

On my left side.

Q

Now, how far were you from the very spot where you saw there seems to be wrestling persons?

A

50 meters. About 50 meters.

Q

Now, when you saw this what did you do?

A

I came near so that I could see it clearly.

Q

How near did you approached that spot, Mr. Witness?

A

About twenty (20) meters.

Q

Now upon reaching that distance from the spot where you said you saw persons who seems to be wrestling what did you see?

A

I saw three (3) persons holding the one who is being raped and one person was on the top of the girl.

Q

Now, did you recognized these three (3) persons whom you saw were holding the victim?

A

Yes, sir.

Q

Who were these three (3) persons holding still the victim?

A

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Antonio Plana, Edgardo Perayra and Rene Saldevea.

Q

Now, before that incident that you saw have you already known these three (3) persons you have identified who have been holding the girl, one of them was actually raping -

ATTY. BARRERA:

I object to the term actual raping. There is still no proof that there was any rape, was holding the girl only. He has not yet given testimony involving the rape.

COURT:

Witness may answer.

A

These three (3) persons I have already known them because we have gone together in a drinking session and I also passed by Cobe.

PUBLIC PROSECUTOR:

Q

Now, if these (3) persons are inside the courtroom, will you please go down from the witness stand and tap the shoulder of these three (3)?

ATTY. BARRERA:

I request as he taps each of them he should mention the name.

A

(Witness came down from the witness stand and tapped the shoulder of Antonio Plana, next as Rene Saldevea and another person he named as Edgardo Perayra.

PUBLIC PROSECUTOR CONTINUING:

Q

Now, what else did you see?

A

The first, at first I saw the three persons holding the victim and the other one is on top of the victim. Later, I saw that the one who is on top of the girl raised his hand and stabbed the victim.

Q

Now, what happened after you saw that the one on top of the victim stabbed the victim?

A

Because I was afraid, I ran away because they might also see me.

Q

Now, where did you proceed after you got frightened of what you saw?

A

Going home to Poblacion Ilawod, Dumarao, Capiz.

Q

Were you able to immediately go home?

A

I was not able to go home because when I passed by the house of Porferio Haguisan, he saw me and he invited me because it was their Milagrosa.

Q

How long did you stay in the house of your Compare Porferio?

A

I stayed there long. I went home already 2:00 o'clock.

xxx

PUBLIC PROSECUTOR:

Q

Now, what did you do when you heard that a person was found there a dead person was found in that very place where you saw the accused on September 23, 1994, holding and raping

A

I went to the Municipal Hall because I also heard that the accused were apprehended and I went there and I saw and recognized them.

COURT:

Q

You mean to tell us Mr. Witness that on September 26, 1994, when the dead body was found in the feeder road of Cobe, you went to the Municipal Hall because the accused was arrested, is that what you mean?

A

Yes, sir.

PUBLIC PROSECUTOR:

Q

What time have you gone to the Municipal Hall?

A

Noon time.

Q

Now, who was the dead person that was found in that spot?

A

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Helen Perote.

Q

When this victim was still alive, have you any occasion to know her?

A

Yes, I know her.

Q

Now, how about the fourth man who was on top of the girl and whom you saw also stabbed the girl on the morning of September 23, 1994, did you recognize him?

A

On that incident I do not know him but when I saw him at the Municipal Hall I know him because they were also together.

Q

And did you know who this fourth man was when you went to the Municipal Hall?

A

Yes, sir, Richard Banday.

Q

If he is inside the courtroom will you please go down from the witness stand and tap the shoulder of Richard Banday?

A

(Witness went down from the witness stand and tapped the shoulder of a person who, when asked answered his name as Richard Banday).[33]

Lagud remained unwavering and consistent even when he was under the grueling cross-examination by accused-appellants' counsel:

ATTY. BARRERA:

Q

At that distance of 50 meters as you said from the place where you saw persons as if wrestling there was no obstruction to your view?

A

There were grasses and trees not so tall.

Q

Now, would you agree with me that the place, I withdraw that. The place where you were and the area where you saw persons as if wrestling which is the elevated portion?

A

On the place where I was.

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Q

So, your portion being elevated you would agree with me that you can see the place where there are persons appearing to be wrestling because it was at the lower portion am I correct?

A

Not so clear because there were grasses and that is why I went near.

Q

How were you able to identify the three (3) persons, namely, Plana, Saldevea and Perayra?

A

When I came near that is the time that I recognized them.

Q

Now, you said that you came nearer to the place where persons were wrestling and you said you were 20 meters from them but when measured it was actually 12 meters. The question is, why did you approach the place where you saw persons wrestling?

A

I went near so that it would be clear to me and I can recognize and confirm as to what they are doing.

Q

You want to tell the Court that it was out of curiosity that you approached the area where you saw persons appearing to be wrestling?

A

Yes, that is what I plan.

Q

You were not afraid instead you were curious isn't it?

A

I was afraid that is why when I went near I also crouched.

Q

Just answer my question. Were you afraid or you were curious that is why you approached the place where persons appeared to be wrestling.

COURT:

Compañero, if you have any correction just make a manifestation, just make it formal,

ATTY. BARRERA:

I am sorry, your honor.

COURT:

Proceed.

A

Just for curiosity sake.

ATTY. BARRERA:

Q

Now, at a distance of 12 meters you recognized three (3) persons holding the arms and leg of the one lying and another person on top of the woman lying is that it?

A

Yes, sir.

Q

And at that distance of 12 meters you identified the three persons as the herein accused, Plana, Perayra, and Saldevea whom you met according to you for three times at the store of Antonio Mendoza, is that correct?

A

Yes, sir.

Q

Now, 12 meters distance from the place where you were sitting up to the place where you pointed at is the area where you identified the accused holding and another one on top of the person lying, there was no obstruction from the area from the place where you were to the area where you saw?

A

It was clear because it was near.

Q

As a matter of fact the only vegetation you can find in the premises from where you were meters away from the area where you saw what you are telling this Court as green grass?

A

Yes, sir. Short grasses.

Q

And you identified only three persons holding not the one lying, you said it was Plana, Perayra and Saldevea, and you do not know the person on top of the person lying, who was covered on top by a man, was he a man or a woman?

A

I think it was a girl because I heard voices like that of a woman.

Q

You think it was a girl. At a distance of 12 meters and you said it was clear to your view can you not identify the person lying and covered by one on top as a woman?

A

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It is not clear because it was covered by a person on top.

Q

Definitely, you told the Court you do not know who was the person on top of the one lying, am I correct at that very moment?

A

Yes, sir.

PUBLIC PROSECUTOR:

Your honor, the translation is I did not yet know him.

ATTY. BARRERA:

Q

What part of his body that person who was on top you saw?

A

From his head to his back.

Q

You did not see his face?

A

No, sir.

Q

What was he actually doing when you saw him for the first time?

A

He was on top of the girl.

PUBLIC PROSECUTOR:

There is a continuation, your honor, he said "naga".

A

He was on top of the girl and he was --

COURT:

He was what? You say it?

A

He is forcing that his will penetrate.

Q

What was that he wanted to have it penetrated?

A

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His organ.

Q

Did the Court get you right that you said you saw - you set properly. Make it of record that witness has been uneasy when being cross-examined. Don't make any undesirable you sit properly. Now, did the Court get you right that the man whom you saw at the top of the person lying was turning his back towards you?

A

I saw his head and back and he was not on the back view but side view.

PUBLIC PROSECUTOR:

May I interpret. And his back was not actually against me but he was somewhat side view position upon me.

COURT:

Q

Did he have his clothes on when he was on top of the person lying?

A

No, sir.

Q

You mean to tell us that he was naked throughout?

A

His pants was lowered down.

Q

Was he naked up?

A

Yes, sir.

Q

At that distance can you see his organ?

A

I cannot see but as if he is trying to force because his back was also moving.

Q

So actually you did not see his organ that he was trying to have it penetrated?

A

No, sir.

Q

Did you see the organ of that woman lying down?

A

No, sir.

ATTY. BARRERA:

Q

Now, so, did the man on top of that woman person lying whom you said was a girl had her pants you said lowered up to where?

A

Up to about his knees.

Q

And the woman at the time you said the man was trying to force his organ penetrate that of a person lying was that person lying struggling or what was that person lying doing?

A

She was struggling and she was held by three persons.

Q

Alright, tell us, you identified Antonio Plana what was he holding at that moment you said you saw?

A

The right foot of the girl.

Q

How about Perayra?

A

On the left foot.

PUBLIC PROSECUTOR:

I think not foot, it is the leg (witness indicating a little above the ankle).

A

Left lower part of the leg.

ATTY. BARRERA:

Q

And Rene Saldevea, what part was he holding, if any according to you?

A

Two (2) hands (witness raising his two hands above his head closed together).

Q

And at that position as you described none of the four (4) persons including the three you identified covered

the mouth of the person lying?

A

I cannot tell because I cannot see.

Q

You mean at a distance of 12 meters you cannot see if the mouth of the person lying was covered or not?

A

I cannot see because she was covered by the person lying on top of her.

Q

You have not heard any sound or voice emanating from the person lying?

A

I heard voices but it was not clear.

Q

Now, that voices you heard what were the nature of those voices?

A

As if pleading.

Q

You wanted to tell us that the voice you heard was the crying or moaning or --

PUBLIC PROSECUTOR:

Your honor, the witness has already described the nature of the voice as if pleading.

ATTY. BARRERA:

I am trying to clarify what -- was it moaning, crying or saying something vocal.

A

Crying.

Q

You did not hear any word being uttered?

A

The words was (sic) not clear.

Q

Now, the person lying (who is) whose pleading you heard was she moving or was she moving her body or any part of her body?

A

She was moving but she was held by three persons.

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Q

Now, you said that the person on top of that woman lying has his pants lowered up to his knee, on the other hand, the person lying did you see if she was totally naked or she had something on or you have not seen it?

A

On his top was naked but her pants was lowered on the left leg. The pants was already taken on the right leg, the pants was not taken off.

Q

So that the person lying was not totally naked at the time you saw it?

A

As to her body she was naked but only the pants on the right side was not taken off.

Q

So at the moment because the upper part of the body had no clothes except portion of the right leg that still retains the pants you would know that it was a woman lying of the ground is that it?

A

Yes, sir.

Q

And at that point of time while the three accused, Plana, Perayra, and Saldevea were holding the hands of the girl and the other one on top of her, can you tell this Court if these four (4) persons while doing those things as you described were conversing or uttered any word?

A

I heard voices but it was not clear.

Q

You mean you heard voices being made by persons you saw?

A

Yes, sir.

Q

And you would like to tell the Court that at a distance of 12 meters from where you were you never heard audibly the words coming from their voices?

A

I cannot understand because their voices were low.

Q

Were they laughing?

A

I have not noticed.

Q

So, you did not notice if they were laughing?

A

No, sir.

Q

You did not hear if they were shouting at one another?

A

No, sir.

Q

You did not hear any of them saying go ahead, we follow also?

A

No, sir.

Q

Now, and later you said you saw a person on top of that girl pulled a knife and stabbed that person lying whom you said was a girl is that it?

A

Yes, sir.

Q

Considering that that person on top of that victim had dress over and had his pants on top of his knee how did he stabbed that victim whom you said was a woman?

A

I noticed that but I do not know where he get (sic) the knife but I noticed that he just raised his hand.

Q

Not one of the three (3) whom you identified gave him the knife except that you only saw that person on top of that woman all of a sudden having a knife and stabbing is that it?

A

Yes, sir.

Q

Now, is that person on top of the woman stabbing that woman did you hear any or uttered by that man stabbing that woman?

A

I did not notice the words he uttered.

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PUBLIC PROSECUTOR:

Your honor, there is a continuation on the answer, I did not notice if he uttered any word because immediately I ran away.

ATTY. BARRERA:

Anyway, let it stay in the record.

COURT:

Proceed.

ATTY. BARRERA:

Q

By the way, how many times (did) you saw that man on top of the woman stabbed that woman?

A

That was the first time when he raised his hand and stabbed her then I ran away.

Q

And so, you did not notice him how many times that person stabbed the woman?

A

No, sir.

Q

At the time she was stabbed did you hear any voice being uttered?

A

I heard as if there was a sound like a moan then I ran away.[34]

The testimony of Lagud positively identifying accused-appellants as the perpetrators of the dastardly crime was corroborated in its material points by the testimonies of the other prosecution witnesses. The prosecution had sufficiently established that accused-appellants were together and were drinking liquor at the early morning of September 23, 1994; Lagud saw them along the feeder road in Barangay Cobe raping a girl and later one of them stabbed her; Bustamante saw them boisterously laughing near the fishpond where the body of Helen was found; Rafael confirmed that Helen took that route on the way to their sister's house for the "milagrosa;" Rafael met accused-appellants, who were all drunk, along the feeder road while she was on her way to her sister's house and; when it was found on September 26, 1994, Helen's body had already been lifeless for more than seventy-two hours.

In light of the positive identification and the other strong corroborative evidence, the trial court properly gave scant consideration to accused-appellants' defense of denial and alibi. Alibi is concededly one of the weakest defenses in criminal cases. It cannot prevail over, and is worthless in the face of, positive identification by credible witnesses that the accused perpetrated the crime.[35]

Aside from accused-appellants who expectedly gave self-serving testimonies, the defense presented other witnesses, mainly relatives of accused-appellants, to establish that they were not at the scene of the crime at the time of its commission. Unfortunately, alibi becomes less plausible when it is corroborated by friends and

relatives who may then not be impartial witnesses.[36] On the other hand, the defense failed to impute any ill motive on the part of the prosecution witnesses to testify falsely against accused-appellants.

Moreover, accused-appellants' defense of alibi cannot be given credence considering that they themselves admit their proximity to the scene of the crime at the time that it occurred. Accused-appellants Plana and Banday claimed that they were at the time at the house of accused-appellant Plana's relatives in Barangay Cobe. Accused-appellants Saldevea and Perayra insisted that they were then in the house of Monina Saldevea in Barangay Cobe. It must be noted that the rape and killing of Helen was committed in the feeder road also in Barangay Cobe.

For alibi to prosper, the following must be established: (a) the presence of accused-appellant in another place at the time of the commission of the offense and; (b) physical impossibility for him to be at the scene of the crime.[37] Accused-appellants miserably failed to satisfy these requisites. Considering that they admit that they were all in Barangay Cobe, where Helen was raped and subsequently killed, it cannot be said that it was physically impossible for them to have committed the crime.

Accused-appellants tried to discredit Lagud by making much of the fact that he did not immediately disclose what he witnessed to the authorities. This contention hardly destroys the testimony of Lagud and his credibility as a witness. As Lagud explained on cross-examination, he was afraid that accused-appellants would harm him had they known that he saw them commit the crime.[38] Besides, as consistently held by this Court, there is no standard form of the human behavioral response to a startling or frightful experience and delay in bringing up the matter to the authorities do not destroy the veracity and credibility of the testimony offered. The Court takes judicial notice of some people's reluctance to be involved in criminal trials. Failure to volunteer what one knows to law enforcement officials does not necessarily impair a witness' credibility.[39]

In obvious attempt to evade the capital penalty of death, accused-appellants opine that granting arguendo that they are guilty of any crime, the crime is only murder because the rape of Helen 'allegedly had not been sufficiently established. This argument is untenable. The evidence on record indubitably establish that, while the other accused-appellants forcibly held Helen, accused-appellant Banday had carnal knowledge of her. Thereafter, they killed her. Lagud categorically testified on this fact.[40] The findings of the medico-legal corroborate Lagud's testimony, thus:

> Q
>
> In entry No. 14, vagina, introitus can easily insert 2 fingers/Hymen with lacerations 3 and 9 o'clock (old laceration) and on the state of decomposition. In that state of decomposition of the victim how were you able to determine the laceration of the hymen of the said victim?
>
> A
>
> Actually, what I did I asked help from the owner of the Funeral Homes to spread the thigh of the victim so that I can easily see the inside of the vagina. Upon opening, I can easily insert my two fingers because of that I tried to spread the vaginal canal I saw three (3) lacerations, I have also seen blood clotting in that area but one reason that I can easily insert my two (2) fingers is because the victim was already in the state of decomposition.
>
> xxx
>
> Q

> Doctor, you said it could have been caused by the laceration that you found which is 6x9, in what or what could have caused the vaginal laceration?
>
> A
>
> In the vagina, the laceration in the hymen is caused only by sexual intercourse. If the female is a virgin, it could have been caused by sexual intercourse.[41]

In fine, accused-appellants' guilt for the crime of rape with homicide had been proved beyond reasonable doubt in this case. Further, the trial court rightly appreciated the existence of conspiracy among the accused-appellants. Their individual acts, taken as a whole, revealed that they shared a common design to rape and kill Helen. They acted in unison and cooperation to achieve the same unlawful objective.[42] The principle that the act of one is the act of all is applicable to accused-appellants in this case.

With respect to the second issue raised by accused-appellants, i.e., they were detained without judicial order and prior to the filing of the information, suffice it to say, that they already waived their right to question the irregularity, if any, in their arrest.[43] Accused-appellants respectively entered a plea of "not guilty" at their arraignment.[44]By so pleading, they submitted to the jurisdiction of the trial court, thereby curing any defect in their arrest, for the legality of an arrest affects only the jurisdiction of the court over their persons.[45]

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, reads:

> Art. 335. When and how rape is committed. -- Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force and intimidation;
> 2. x x x;
> 3. x x x.
>
> x x x
>
> When by reason or on occasion of the rape, a homicide is committed, the penalty shall be death.
>
> x x x

Accused-appellants' guilt for the crime of rape with homicide having been established beyond reasonable doubt, the imposition of the penalty of death upon them is warranted. Four members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional; nevertheless they submit to the ruling of the Court, by majority vote, that the law is constitutional and the death penalty should be accordingly imposed.

However, there is need to modify the damages awarded to the heirs of Helen by the trial court. In addition to the sum of P25,000.00 as actual damages, the trial court awarded to the heirs of Helen the sum of P50,000.00 as civil indemnity. This amount should be increased in consonance with prevailing jurisprudence[46] fixing the civil indemnity in cases of rape with homicide at P100,000.00. The Court, likewise, finds it proper to award the sum of P50,000.00 as moral damages. The award of moral damages may be made to the heirs of the victim in a criminal proceeding without need of proof. The fact that they suffered the trauma of mental or physical and psychological sufferings which constitute the basis for moral damages under the Civil Code are too obvious to still require recital thereof at trial.[47]

WHEREFORE, the decision of the Regional Trial Court, Branch 15, Roxas City finding accused-appellants Antonio Plana, Edgardo Perayra, Rene Saldevea and Richard Banday, guilty of Rape with Homicide under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and imposing upon them the supreme

penalty of Death is AFFIRMED with the MODIFICATION that said accused-appellants are hereby ordered, jointly and severally, to pay the heirs of Helen Perote the amounts of P100,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as actual damages.

Let the records of this case be forwarded to the Office of the President upon finality of this decision for possible exercise of executive clemency in accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

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[1] RECORDS, Criminal Case 4659, p. 1.

[2] Exhibit "A."

[3] TSN, February 20, 1995, pp. 11-24.

[4] Id., p. 26.

[5] TSN, March 8, 1995, pp. 4-17.

[6] Ibid.

[7] Sworn Statement, dated September 27, 1994; Exhibit "I."

[8] See Note 6, pp. 6, 8, 16 and 17

[9] TSN, March 22, 1995, pp. 4-12.

[10] Id., pp. 12-20.

[11] TSN, April 5, 1995, pp. 5-12.

[12] Id., pp. 14-16.

[13] TSN, April 5, 1995, pp. 45-56.

[14] Id., pp. 60-63.

[15] TSN, Testimony of Romeo Dela Torre Diaz, April 19, pp. 14-17.

[16] TSN, Testimony of Linda Perote, April 19, 1995, p 4.

[17] TSN, Testimony of Antonio Plana, June 3, 1996, pp. 3-12; TSN, Testimony of Richard Banday, June 17, 1996, pp. 27-35; TSN, Testimony of Edgardo Perayra, July 1, 1996, pp. 19-28 and; TSN, Testimony of Rene Saldevea, July 9, 1996, pp. 2-6.

[18] TSN, Testimony of Antonio Plana, June 3, 1996, pp. 12-17; TSN, Testimony of Richard Banday, June 17, 1996, pp. 36-41.

[19] TSN, Testimony of Edgardo Perayra, July 1, 1996, pp. 28-31; TSN, Testimony of Rene Saldevea, July 9, 1999, pp. 6-7.

[20] TSN, June 3, 1996, pp. 18-24.

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[21] TSN, July 1, 1996, pp. 33-38.

[22] TSN, June 17, 1996, pp. 42-49.

[23] TSN, February 12, 1996, pp. 4-11

[24] TSN, February 26, 1996, pp. 14-18.

[25] TSN, March 4, 1996, pp. 3-13.

[26] TSN, March 4, 1996, pp. 32-34.

[27] TSN, April 29, 1996, pp. 7-15.

[28] TSN, April 29, 1996, pp. 30-35.

[29] TSN, July 24, 1996, p. 3.

[30] Rollo, p. 49.

[31] Brief for Accused-appellants, pp. 2-3; Rollo, pp. 82-83. Underscoring in the original.

[32] People vs. Mittu, 333 SCRA 121 (2000); People vs. Andres, 296 SCRA 318 (1998).

[33] TSN, March 8, 1995, pp. 4-9.

[34] Id., pp. 37-57.

[35] People vs. Tompong and Gumawa, G.R. No. 133191-93, 11 July 2000, pp. 14-15; People vs. Bracamonte, 257 SCRA 489 (1996).

[36] People vs. Agomo-o, 334 SCRA 279 (2000); People vs. Araneta, 300 SCRA 80 (1998).

[37] Id.; People vs. Sumalde, 328 SCRA 374 (2000).

[38] See Note 34, p. 65.

[39] People vs. Salonga et al., 329 SCRA 468 (2000); People vs. De Leon, 248 SCRA 609 (1995).

[40] See Notes 5 and 6:

> xxx
>
> Q
>
> Now upon reaching that distance from the spot where you said you saw persons who seems to be wrestling what did you see?
>
> A
>
> I saw three (3) persons holding the one who is being raped and one person was on the top of the girl.
>
> xxx

Q

Did he have his clothes on when he was on top of the person lying?

A

No, sir.

Q

You mean to tell us that he was naked throughout?

A

His pants was lowered down.

Q

Was he naked up?

A

Yes, sir.

Q

At that distance can you see his organ?

A

I cannot see but as if he is trying to force because his back was also moving.

Q

So actually you did not see his organ that he was trying to have it penetrated?

A

No, sir.

Q

Did you see the organ of that woman lying down?

A

No, sir.

ATTY. BARRERA:

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Q

Now, so, did the man on top of that woman person lying whom you said was a girl had her pants you said lowered up to where?

A

Up to about his knees.

Q

And the woman at the time you said the man was trying to force his organ penetrate that of a person lying was that person lying struggling or what was that person lying doing?

A

She was struggling and she was held by three persons.

[41] See Note 3, pp. 24-27.

[42] People vs. Lagarto, 326 SCRA 693 (2000); People vs. Sumalpong, 284 SCRA 229 (1998).

[43] Id.; People vs. Nitcha, 240 SCRA 283 (1995).

[44] Order, February 9, 1995; Records, p. 95.

[45] Note 42; People vs. Nazareno, 260 SCRA 256 (1996).

[46] Id.; People vs. Salonga, supra.; People vs. Tahop, 315 SCRA 465 (1999).

[47] People vs. Ballenas, 330 SCRA 519 (2000); People vs. Robles, 305 SCRA 273 (1999).

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