PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLLY ABULENCIA Y COYOS, DEFENDANT-APPELLANT.

G.R. No. 138403. August 22, 2001

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PER CURIAM:

In the multitude of cases which passed this Court, we did not flinch in sending men rapacious of the flesh to the gallows. Lamentably, there still remains such callous men who commit unimaginable acts and even concoct tales, no matter how absurd, just to exculpate themselves.

The case at bench is an illustration.

On August 4, 1998, a cold-blooded ravager, Rolly Abulencia y Coyos, preyed on ten-year old Rebelyn Garcia.

In the early morning of the following day, Rebelyn's lifeless, naked body was found floating at the Colobong creek in San Manuel, Pangasinan, with marks of bruises, burns and injuries manifesting that she was defiled and later drowned to death.

In an Information dated September 7, 1998, docketed as Criminal Case No. U-9777, Abulencia was charged before the Regional Trial Court, Branch 46, Urdaneta City for rape with homicide. The Information reads:

> "That on or about August 4, 1998, between 5:00 o'clock P.M. to 8:00 0'clock in the evening, at barangay San Juan, San Manuel, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, wilfully, unlawfully and feloneously (sic) have carnal knowledge of one REBELYN GARCIA y AGAPAY, a minor 10 years of age. That by reason thereof, to conceal his criminal act, with intent to kill, did then and there, wilfully, unlawfully and feloniously drown said Rebelyn Garcia y Agapay in the San Juan River of said municipality. The body of the victim was later retrieved at the Colobong Creek at Sitio Casilagan, Brgy. San Juan, San Manuel, Pangasinan, to the damage and prejudice of her heirs.
>
> "Contrary to Art. 266-A, No. 1(d), Republic Act No. 8353, in relation to Art. 249, Revised Penal Code, as amended by Republic Act No. 7659."[1]

When arraigned, with the assistance of counsel, Abulencia pleaded not guilty. At the trial, the prosecution presented six (6) witnesses, namely: Dr. Asuncion Tuvera, PO3 Avelino Sandi, PO3 Randy Bergado, Dennis Mojares, Reynaldo Garcia, Jr. and Reynaldo Garcia, Sr. The defense presented, as lone witness, Abulencia himself.

The facts are not disputed:

Rebelyn Garcia, the victim, was a 10-year old[2] lass from Poblacion, Asingan, Pangasinan and a fourth grader at the Narciso Ramos Elementary School. She is the daughter of Reynaldo and Alicia Garcia.[3]

On August 4, 1998, at about 7:00 o'clock in the morning, Rebelyn's brother, Reynaldo Garcia, Jr., and a jeepney driver were at the Asingan jeepney terminal waiting for passengers.[4]

After two (2) hours, accused Rolly Abulencia arrived and invited Reynaldo to a drinking spree.[5] Reynaldo

joined Abulencia and one Reynaldo Pascua in drinking Red Horse beer at the Asingan jeepney terminal. At about 12 o'clock noon, each one had consumed about four (4) bottles of beer.[6]

Thereafter, Reynaldo and Abulencia rode a tricycle and proceed to the former's residence at Poblacion, Asingan where they again drank beer and later slept on a bamboo bed (papag). Rebelyn was then inside the house. At that time, her parents were not around.[7]

Reynaldo and Abulencia woke up at about 5:30 o'clock in the afternoon of that day. Abulencia then asked permission to buy dilis from a nearby store. But Reynaldo, noticing that Abulencia was drunk, advised the latter not to leave.[8] Abulencia ignored Reynaldo and went out. Rebelyn tagged along.[9]

Abulencia and Rebelyn never returned, although the store where they were supposed to buy dilis is merely 40 meters away from the house.[10] Thereupon, Reynaldo and his family started looking for the two as far as Rosales, Pangasinan but failed to find them.[11]

About 8:00 o'clock in the evening, Abulencia surrendered to Mayor Felipe Sevilleja of San Manuel, Pangasinan. PO3 Randy Bergado, a PNP officer assigned in San Manuel who was then in the mayor's house, was informed by Abulencia that "he had a small girl companion that he accidentally bumped at the Aburido bridge" and who "might have been dead because the flow of the river is so fast."[12]

PO3 Bergado immediately turned over Abulencia to the San Manuel police station. Forthwith, PO3 Avelino Sandi entered the incident in the police blotter. Abulencia was later detained.[13]

At about 6:00 o'clock the following morning (August 5, 1998), Rebelyn's lifeless, naked body was found floating at the Colobong creek near the Aburido bridge at Sitio Casilagan, San Juan, San Manuel, Pangasinan.[14]

Dr. Asuncion Tuvera, Municipal Health Officer, conducted an autopsy on the victim's cadaver. The doctor's autopsy report states:

"A. External Findings:

Head - lacerated wound about 1 cm. in length at the corner of the left eye (superficial)

- Multiple hematoma, contussion forehead;

- Lacerated wound about 1 1/4 inches in length at the frontal area;

- 2 lacerated wound about one inch + 0.5 inch. respectively, at the rt. temporal area.

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- lacerated wound about 0.5 cm. In length at the rt. lower lip

Chest

- hematoma at the upper portion of the sternum

Extremities

- Multiple burn on both upper arms.

Genitalia

- Multiple vaginal wall and hymenal laceration

NOTE:

Vaginal smear taken for the presence of spermatozoa. Result is negative.

"B. Internal Findings:

Lungs - presence of H2O in the lung tissues.

"CAUSE OF DEATH:

Cardio-respiratory arrest 2 drowning; shock 2 rape."[15]

Dr. Tuvera further found that the multiple lacerations on the vaginal wall and hymen of Rebelyn's genitalia

indicate that a hard object, probably an erect penis, was inserted therein;[16] and that the presence of a large amount of water in Rebelyn's lungs indicates that she was submerged and droned.[17]

Dennis Mojares, a radio commentator of DZWN Bombo Radio, testified that on August 6, 1998, when he interviewed Abulencia at the Municipal Jail of San Manuel, Pangasinan, the latter admitted having raped Rebelyn and that she fell off the bridge.[18] The interview was tape recorded, which tape Mojares identified and presented in court.[19]

In his defense, accused Rolly Abulencia denied the charge. In gist,[20] the following is his story: After he left the Garcia residence at around 5:00 o'clock in the afternoon of August 4, 1998 to buy dilis in the market, he noticed Rebelyn Garcia following him. But he just ignored her. However, upon reaching the market, he decided not to buy dilis anymore. Instead, he went home to Binalonan, Pangasinan. He then proceeded towards San Manuel while Rebelyn continued to follow him closely. Annoyed, he told her he was going to San Manuel, but she insisted on following him because she wanted to go to his house. They then took the provincial road, but upon reaching the Aburido bridge, he distanced himself from the girl. However, she ran towards him. While she was running, he tried to tell her to go home, but in doing so he accidentally tripped (napatid) her off, causing her to fall from the bridge. He got nervous and proceeded to the house of his Auntie Deciang Delfin and asked her to accompany him to the authorities so he could surrender. They approached Mayor Sevilleja of San Miguel, Pangasinan.

After the trial on the merits, the court a quo rendered its decision dated March 16, 1999, convicting accused Rolly Abulencia of the crime as charged. The dispositive portion of the decision states:

> "WHEREFORE, the Court finds ROLLY ABULENCIA y COYOS, guilty beyond reasonable doubt of the crime of aggravated RAPE WITH HOMICIDE (punishable under Article 266-A, No. 1(d) and Article 266-B, paragraph 4 of republic Act No. 8353, in relation to Article 249, Revised Penal Code and republic Act No. 7659) and the Court sentences Rolly Abulencia to suffer the penalty of DEATH, to be implemented in the manner provided for by law. Ordering the accused to indemnify the heirs of Rebelyn Garcia, the sum of P75,000.00 damages, and another sum of P20,000.00 for exemplary damages plus P6,425.00 as actual damages."
>
> xxx xxx xxx"[21]

Appellant Rolly Abulencia bewails his conviction, asserting that the court a quo:

> "I
>
> "x x x GRAVELY ERRED IN CONVICTING (HIM) OF THE CRIME CHARGED BASED PRINCIPALLY ON THE MEDICO-LEGAL FINDINGS (EXHIBIT "A") AND DESPITE THE PAUCITY OF DIRECT EVIDENCE POINTING TO (HIM) AS THE CULPRIT IN THE X X X INCIDENT.
>
> "II
>
> "x x x ERRED IN RELYING ON THE VULNERABILITY OF DEFENSE EVIDENCE RATHER THAN THE STRENGTH OF PROSECUTION EVIDENCE IN FINDING A VERDICT OF GUILT AGAINST (HIM)."[22]

Appellant mainly contends that there is no direct evidence linking him to the commission of the crime and that the findings of the medico-legal officer are not sufficient to warrant his conviction by the trial court.

This Court does not agree.

Normally, the crime of rape - whether simple, qualified or complexed with other crimes - is committed in seclusion, thereby rendering its prosecution difficult owing to the absence of witnesses to its commission.

The prosecution of such crime becomes even more intricate and complex if homicide is committed since the victim herself would no longer be able to testify against the perpetrator. In most cases, only circumstantial evidence is available to prove its commission.[23]

The absence of direct evidence, however, does not preclude the conviction of a person accused of the complex crime of rape with homicide. Circumstantial evidence can be as potent as direct evidence to sustain a conviction provided that there is a concurrence of all the requisites prescribed in Section 5, Rule 133 of the Revised Rules on Evidence, thus:

> "Sec. 5. Circumstantial Evidence, when sufficient.- 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 a reasonable doubt.[24]

Likewise this Court has held that an accused can be convicted based on circumstantial evidence if the circumstances proven constitute an unbroken chain which leads to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.[25]

Admittedly, in the case at bar, the trial court relied solely on circumstantial evidence in finding that the appellant is guilty as charged - and it did so correctly.

It is established from the testimony of prosecution witness Reynaldo Garcia, Jr. that he met the appellant in the morning of that fateful day of August 4, 1998 and later, both engaged in a drinking spree; that they slept on the papag of Garcia's house in the afternoon of that day; that the victim Rebelyn, was also in the same house at that time; that after waking up, the appellant left the house at about 5:30 o'clock in the afternoon to buy dilis in the nearby store located 40 meters away, the victim tagging along; that the appellant and Rebelyn never returned; that in the evening of the same day, the appellant surrendered to Mayor Sevilleja, reporting that he was with the victim when the latter allegedly fell from the bridge after he "accidentally tripped (napatid) her" off; that the appellant admitted having raped the victim in a tape interview by Dennis Mojares, another prosecution witness; that the victim was found dead the following morning floating at the Colobong creek near the Aburido bridge; and that the autopsy conducted on her cadaver shows that she was sexually abused and, thereafter, brutally killed.

The appellant himself admitted that he was alone with Rebelyn in the evening of August 4, 1998. His only defense is that Rebelyn died because she accidentally fell from the bridge. We find her tale so fantastic to be accorded any iota of credibility. This is his incredible story:

> "COURT:
>
> How about Rebelyn when you left the house?
>
> "A
>
> I saw Rebelyn when I was on my way to the market, sir, she was at my back.
>
> "Q
>
> On your way, Rebelyn was following you in the market?
>
> "A
>
> Yes, sir.

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"ATTY. FLORENDO: When did you notice Rebelyn to be following you?

"A

When she was at my back, sir.

"Q

And when you noticed that she was following you, what did you do?

"A

I did not mind, sir.

"COURT:

You just ignored her?

"A

Yes, sir.

ATTY. FLORRENDO: And you were able to reach the public market?

"A

Yes, sir.

"Q

Upon reaching the public market, what happened?

"A

I decided to go home, sir.

"COURT: But you were able to buy dilis?

"A

No more, sir, but I decided to go home.

"Q

Whereat?

"A

Binalonan, Pangasinan, sir.

"ATTY. FLORENDO: Where was Rebelyn when you decided to go home?

"A

She was at my back following me, sir.

"COURT: You said you decided to go home to Binalonan, Pangasinan did you take a jeep?

"A

No, sir, I just walked.

"Q

From the public market of Asingan to Binalonan you just walked?

"A

I walked but I was not able to reach Binalonan, sir.

"Q

You decided to go home not to buy dilis anymore?

"A

Yes, sir.

"Q

And you thought of going home?

"A

Yes, sir.

"Q

Were you able to go home?

"A

No, sir.

"Q

From the public market where did you go?

"A

San Juan, San Manuel, Pangasinan, sir.

"Q

From the public market where did you go?

"A

I proceeded to San Manuel, Pangasinan.

"Q

What did you take in going to San Manuel, Pangasinan?

"A

I just walked, sir.

"Q

You mean to say that you walked this distance from the public market of Asingan to San Manuel, Pangasinan?

"A

Yes, sir.

"Q

From the public market proceeding to San Manuel, where was Rebelyn?

"A

She was at my back, sir.

"ATTY. FLORENDO: While you were walking towards San Manuel, Pangasinan, did you ever talk to Rebelyn?

"A

Yes, sir.

"Q

You mean to tell us that Rebelyn was already walking with you side by side?

"A

Yes, sir.

"COURT: Did you tell Rebelyn that you are proceeding to San Manuel, Pangasinan?

"A

Yes, sir.

"Q

Despite of that she is still following you?

"A

Yes, sir.

"ATTY. FLORENDO: By the way, while you were at the public market at Asingan, Pangasinan, did Rebelyn ever talk to you?

"A

Yes, sir.

"Q

What else did she tell you?

"A

She told me that she will go to our house, sir.

"Q

She told you that she pay a visit to your house?

"A

Yes, sir.

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"Q

While walking with Rebelyn what place were you able to reach?

"A

Aburido, sir.

"COURT: What route did you take going to San Manuel, Pangasinan?

"A

The provincial road, sir.

"ATTY. FLORENDO: While you were at the Aburido bridge what were you doing with Rebelyn?

"A

I was running away from her, sir.

"Q

You were running away from Rebelyn why?

"A

Because I want her to be left, sir.

"Q

And what did Rebelyn do when you tried to run away from her?

"A

She ran following me, sir.

"Q

By the way, what is that Aburido bridge?

"A

A cemented bridge, sir.

"Q

So, when she ran towards you, what happened, Mr. Witness?

"A

I accidentally tripped (napatid) her, sir.

"Q

When you said that you accidentally tripped Rebelyn what happened to her?

"A

She fell to the bridge.

"Q

When Rebelyn fell to the bridge what else happened?

"A

I went home, sir.

x x x"[26]

We cannot accept as a valid defense such kind of tale which is highly preposterous and obviously contrary to the common experience of mankind. Time and again, we declared the legal truism that "evidence to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself. Human perception can be warped by the impact of events and testimony colored by the unconscious workings of the mind. No better test has yet been found to measure the value of a witness' testimony than its conformity to the knowledge and common experience of mankind."[27]

Appellant's defense is a mere denial which is intrinsically weak. To merit credence, it must be buttressed by strong evidence of non-culpability.[28] This, the appellant failed to do.

Even granting that Rebelyn fell from the bridge, the autopsy report of Dr. Tuvera does not support such incident.

As found by Dr. Tuvera, Rebelyn's body bore injuries not attributed to a fall. There were multiple cigarette burns on both her upper arms.[29] Her genitalia showed multiple lacerations on the vaginal wall and hymen extending to the upper part of the urethra.[30]

Anent the injuries found in Rebelyn's genitalia, Dr. Tuvera observed:

"COURT:

What does multiple vaginal wall laceration indicate?

"A

It indicates that in he vaginal area, a foreign object was inserted, there is contact, sir.

"Q

What is your conclusion?

"A

Probably a male genitalia or any hard object, sir.

"Q

What does multiple laceration on the vaginal wall to the urethra indicate?

"A

It indicates that there is a contact in the genitalia, it may be caused by erect penis or genitalia of a male or maybe caused by a hard object, sir."[31]

And this fact is more revealing. Rebelyn's body was found naked. If she merely fell from the bridge, as appellant wants us to believe, it is highly improbable that the current of the river would totally undress her.

The appellant also contends that the absence of spermatozoa in Rebelyn's genitalia and the failure of Dr. Tuvera to show that the lacerations were fresh do not prove that the victim was raped.

This argument does not persuade us. The absence of spermatozoa does not negate a finding of rape considering

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that its presence is not an essential element of the crime.

The totality of all the circumstances obtaining, taken together with the condition of Rebelyn's body when found, eloquently indicate that the appellant sexually assaulted her before drowning her to death.

It bears stressing that appellant admitted having raped Rebelyn when he was interviewed by Dennis Mojares, a radio commentator of Bombo Radio. Mojares' testimony lends support to our conclusion. We have held that "a confession to a radio reporter is admissible where it was not shown that said reporter was acting for the police or that the interview was conducted under circumstances where it is apparent that the suspect confessed to the killing out of fear."[32]

After considering all the evidence presented, this Court is constrained to affirm the appealed decision of the trial court imposing the death penalty upon the appellant. We, however, modify the same insofar as the civil aspect of the case is concerned. Although this matter has not been raised by the parties, especially the Solicitor General, it is a settled rule that in a criminal case, an appeal to the Supreme Court throws the whole case open for review, and it becomes the duty of the Court to correct such errors as may be found in the appealed judgment, whether they are made the subject of assignments of error or not.[33]

With regard to the civil indemnity, the trial court awarded only P75,000.00 Current jurisprudence has fixed at P100,000.00 the civil indemnity in cases of rape with homicide, which is fully justified and properly commensurate with the seriousness of that special complex crime.[34]

The trial court did not award moral damages to the victim's family. Based on prevailing jurisprudence, however, moral damages may be awarded to the heirs of the victim without need for pleading or proof of its basis for their mental, physical and psychological sufferings are too obvious to still require their recital at the trial. Hence, moral damages in the amount of P50,000.00 must be awarded.[35]

In People vs. Lagarto,[36] we held that attendant circumstances may be considered to determine civil liability. Thus, in view of the evident cruelty inflicted upon Rebelyn, as shown by the multiple burns and contusions on her body, we grant the award of exemplary damages in the amount of P25,000.00[37]

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 majority members that the law is constitutional and that the death penalty should be imposed.

WHEREFORE, the appealed decision convicting ROLLY ABULENCIA y COYOS of the crime of rape with homicide and sentencing him to suffer the penalty of DEATH, is AFFIRMED with MODIFICATION insofar as the civil aspect is concerned. Appellant is thus ordered to PAY the heirs of Rebelyn Garcia P100,000.00 as civil indemnity; P50,000.00 as moral damages; P25,000.00 as exemplary damages; and P6,425.00 as actual damages.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this decision, let the certified true copy of the record of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

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

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[1] RTC Records, p. 1.

[2] Exhibit "H" (Birth Certificate).

[3] TSN, November 24, 1998, p. 11; December 15, 1998, pp. 10-12.

[4] Ibid., pp.3-4, 11.

[5] Ibid., pp. 4-5.

[6] Ibid., pp. 5-6.

[7] Ibid., pp. 6-8.

[8] Ibid., p. 8.

[9] Ibid., p. 9.

[10] Ibid..

[11] Ibid., p. 9-10.

[12] TSN, Nov. 18, 1998, pp. 4-5.

[13] Ibid., p. 6

[14] TSN, Nov. 17, 1998, pp. 9-12; Nov. 24, 1998, pp. 12-13.

[15] Exhibit "A", RTC records, p. 14.

[16] TSN, Nov. 10, 1998, pp. 9 and 11-12.

[17] Ibid., pp. 10-11.

[18] TSN, Dec. 15, 1998, pp. 5-6.

[19] Ibid., pp. 6-7; Exhibit "G".

[20] See Brief for the Accused-Appellant, Rollo, pp. 57-58; TSN, Feb. 23, 1999, pp. 8-12.

[21] RTC records, pp. 117-118.

[22] Brief for the Accused-Appellant, Rollo, p. 54.

[23] People vs. Robles, Jr., 305 SCRA 273 (1999).

[24] People vs. Tabarangao, 303 SCRA 623 (1999).

[25] People vs. Eubra, 274 SCRA 180 (1997).

[26] TSN, Direct testimony of Abulencia, February 23, 1999, pp. 8-11.

[27] People vs. Baquiran, 20 SCRA 451 (1967), cited in People vs. Magpantay, 284 SCRA 96 (1998).

[28] People vs. Ballenas, 330 SCRA 519 (2000).

[29] TSN, Nov. 10, 1998, p. 9.

[30] Ibid.

[31] TSN, Nov. 10, 1998, pp. 11-12.

[32] People vs. Domantay, 307 SCRA 1 (1999).

[33] People vs. Calayca, 301 SCRA 192 (1999), cited in People vs. Palermo, G.R. No. 120630, June 28, 2001.

[34] People vs. Robles, supra.

[35] People vs. Omar, 327 SCRA 221 (2000).

[36] 326 SCRA 693, G.R. Nos. 118828 and 119371, February 29, 2000.

[37] People vs. Danilo Catubig, G.R. No. 137842, August 21, 2001.

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