

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO SILVANO, ACCUSED-APPELLANT.*G.R. No. 144886. April 29, 2002*

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-144886/>**MENDOZA, J.:**

This is an appeal from the decision,[1] dated June 26, 2000, of the Regional Trial Court, Branch 18, Midsayap, Cotabato, finding accused-appellant Antonio Silvano guilty of the crime of rape with homicide and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim Maramanay Tomas P50,000.00 as civil indemnity and P50,000.00 as moral damages.

The crime was committed on October 7, 1991 in Inudaran, Mapurok, Alamada, Cotabato. On March 9, 1993, more than a year after the commission of the crime, a criminal complaint for attempted rape with homicide was filed in the Municipal Circuit Trial Court of Pigcawayan-Alamada, Cotabato[2] against accused-appellant. On March 16, 1993, accused-appellant was arrested.

After appropriate preliminary investigation, Acting Judge Charito Untal-de Guzman of the Municipal Circuit Trial Court found probable cause and accordingly remanded the case to the Provincial Prosecutor. In a resolution dated January 25, 1994, Rolando Y. Deiparine, of the Provincial Prosecution Office in Kidapawan, Cotabato, modified Judge de Guzman's findings and recommended the filing of consummated rape with homicide against accused-appellant.[3] His recommendation was approved and the following information was filed, alleging —

That on or about October 7, 1991 in the Municipality of Alamada, Province of Cotabato, Philippines the said accused, armed with a bladed weapon, did then and there, willfully, unlawfully and feloniously and by means of force and intimidation, succeeded in having carnal knowledge with one MARAMANAY TOMAS against her will, that after the occasion the said accused, with intent to kill, stabbed the victim hitting her on the different parts of her body, which is the direct and proximate cause of her death thereafter.

CONTRARY TO LAW.[4]

Upon being on August 23, 1994, accused-appellant entered a plea of not guilty, whereupon he was tried.[5]

Four witnesses were presented by the prosecution: namely Constancio Jimenez, accused-appellant's nephew; Samotor Polayagan, the person who found the body of the victim at the crime scene; Onotan Tomas, the victim's father; and Dr. Ebenezer Demetillo, who conducted the necropsy.

The prosecution evidence shows: The body of Maramanay Tomas, a Muslim girl, was found by a certain Margarito near the river at Sitio Inudaran, Barangay Mapurok, Alamada, Cotabato at around 1 o'clock in the afternoon of October 7, 1991.[6] Upon receipt of the information, prosecution witness Samotor Polayagan said he proceeded to the crime scene and found the dead body of a girl. He saw a turban (tubao) ten meters, more or less, from the cadaver. Polayagan said that he did not move the cadaver and waited for the police to arrive at the scene.[7]

One policeman arrived, who then made a sketch and a report of the crime. The body of Maramanay Tomas was subsequently brought to her home.[8] At the request of Alamada Mayor Wenceslao dela Cerna, a necropsy examination was conducted by Dr. Ebenezer Demetillo on the same day. In describing the injuries sustained by and the examination conducted on the victim, Dr. Demetillo testified:

PROS. LUMANG:

. . . There are how many serious wounds in these 21 stab wounds which will cause the instantaneous death of the victim?

A

The serious stab wound is the first stab wound which is 2 cms. in width x 6 cms. depth supracelanicular area penetrating the upper right lung. This wound is more than enough to cause the hypovolemia of the victim. Also the number 2 stab wound is fatal. It is 2 cms. in width x 4 cms. in depth by medial active of the right neck cutting the jugular vein. So, this is more than enough to cause the hypovolemia of the patient and the rest are minor, sir.

Q

When you say hypovolemia, you mean to say the loss of blood of the victim?

A

Yes, sir.

Q

So, in other words, even if only these two wounds that were inflicted it will cause the immediate death of the victim?

A

Yes, sir.

. . . .

Q

So, in totality Doctor, what was then therefore the cause of death of the victim?

A

The cause of death of the victim is cardio-respiratory arrest and the second is hypovolemia then the multiple stab wounds.

....

Q

Aside from the injuries inflicted on the cadaver of Maramanay Tomas, did you ever try to conduct any examination?

A

Yes, I examined the different parts of her body from head to foot sir.

Q

Did you conduct an examination on the genitalia of the victim?

A

Yes, sir.

Q

Do you still remember what was your findings on the genitalia of the cadaver of the victim when you conducted a necropsy examination?

A

Based on that report, I did not put any findings on the genitalia because I did not find any.[9]

More than a year after Maramanay Tomas' death, accused-appellant allegedly confessed to his nephew, Constancio Jimenez, at a birthday party that he had raped and killed the victim. On the basis of this alleged confession, Jimenez gave a statement on March 3, 1993 incriminating his uncle, accused-appellant Antonio Silvano. The statement was given to the Philippine National Police of Alamada, Cotabato. Testifying on the alleged confession of accused-appellant, Jimenez said that on December 3, 1992, accused-appellant came to his house in Kapayawi, Libungan, Cotabato for his son's birthday party. While they were having drinks with three other persons (Garcio Payot, Donita Payot and Orlando Mojado), accused-appellant allegedly told Jimenez he was not going back to Alamada because the police were looking for him as he had raped and killed a Muslim girl. Accused-appellant allegedly killed the child after raping her for fear that she would testify against him.[10] Jimenez testified that accused-appellant had in fact transferred residence many times to escape from the police. From Alamada, Cotabato, accused-appellant transferred to Malamote, Midsayap, Cotabato, and then to Kapayawi, Libungan, Cotabato.[11]

On cross-examination, however, Jimenez admitted that there was bad blood between him and accused-appellant. He said:

ATTY. ERAMIS:

... Is it not [true] that on May 4 in Kapayawi you have stated that your house and the house of the accused is near [to] each other, and is it not [true] that there was a conflict between you and the accused in connection

with your dogs and your chickens?

A

Yes, sir. When he is drunk he stabbed our dogs.

Q

And you do not like the behavior of the accused?

A

Yes, sir.

Q

And as neighbor you do not like the behavior of the accused?

A

Yes, sir.

Q

Even if he is your uncle?

A

Yes, sir.

Q

And in fact you are harboring hatred against the accused?

A

Yes, sir.

Q

You did not see the commission of the crime in this case?

A

Yes, sir. I am not an eyewitness of the incident and I am only telling to this court the words which was told by the accused to me during the birthday party of my son.

Q

And what is the reason why you said you do not like the behavior of the accused and in fact you harbored

hatred [against] him. Why is it that you invited him to the birthday party of your son[?] What is the reason?

....

A

Because we are [close to] each other sir and our closeness [ended] when he chased my son, sir.

Q

And because of that hatred you decided to testify against him in this case?

A

Yes, sir.

Q

As an act of vengeance?

A

Yes, sir.[12]

Testifying in his turn, Onotan Tomas, the victim's father, said he came to know the identity of the person who allegedly killed his daughter only after more than a year since her death. He claimed to have spent more than P25,000.00 for his daughter's wake and another P25,000.00 for his daughter's 40 days and first year death anniversary.[13] These amounts, however, were not supported by receipts.

At the conclusion of its case, the prosecution failed to make a formal offer of its evidence. This was construed by the trial court as a waiver of the formal offer of evidence.[14]

The defense then presented its only witness: accused-appellant Antonio Silvano. He denied going to the birthday party of Constancio Jimenez's son on December 3, 1992. He denied having told Jimenez that he had raped and killed a Muslim child in Alamada, Cotabato. Nor did he leave a tubao and knife at the crime scene. He said that on October 7, 1991, when the crime was committed, he was in his house in Brgy. Kapayawi, Libungan, Cotabato. Accused-appellant said he and Jimenez had altercations because accused-appellant hit Jimenez's cows for feeding in his corn land and Jimenez's dogs devoured his chickens. Said accused-appellant:

Q

You were charged [with] rape with Homicide before this Honorable Court which happened on October 7, 1991 at Sitio Mapurok, Alamada, Cotabato based on the testimony of Constancio Jimenez who testified in court that on December 3, 1992 you were invited to his house and you attended this party and on that occasion you admitted that you allegedly killed a girl and allegedly you left a knife and tubao in the crime scene, what can you say about this?

A

That is not true, sir.

Q

Why do you say that this is not true?

A

Because I and Constancio Jimenez used to have a quarrel, sir.

Q

Could you tell this Honorable Court when did this first quarrel start?

A

1990, sir.

Q

Could you tell this Honorable Court what was your quarrel with Constancio Jimenez?

A

It pertains to his cow, sir.

Q

Do you know . . . where . . . this Constancio Jimenez live[s]?

A

Yes, sir.

Q

Where?

A

In Kapayawi, sir.

Q

You mean to tell us that he is your neighbor?

A

Yes, sir.

Q

You said you have a quarrel arising from a cow, could you tell us what happened to the cow?

A

This Constancio Jimenez had 10 heads of cows and sometimes some of these cows [go] to my corn land.

Q

And what did you do to those cows [which go] to your farm?

A

I drove [away] the other cows and there was one cow left. I [hit] that cow, sir.

Q

After hitting that cow what was the reaction of Constancio Jimenez if any?

A

That was the root of our quarrel, he sided with these cows who destroyed my plants.

Q

And you said you have your first quarrel arising from a cow, did you have any [more] quarrel with this Constancio Jimenez?

A

Yes, sir, there was.

Q

Could you tell this Honorable Court when was that?

A

1993, sir.

Q

Could you tell us what was the root of that quarrel in 1993?

A

About the dog, sir?

Q

Could you tell us what was the relation of this dog to your quarrel?

A

His dog [ate] my chicken, sir.

....

Q

Why do you say that the testimony of Constancio Jimenez that you left a tubao and a knife, that you admitted you killed and rape[d] a Muslim girl, you said that that is not true?

A

He harbored ill feelings against me, sir.[15]

On June 26, 2000, the trial court rendered its decision, the dispositive portion of which states:

WHEREFORE, finding accused ANTONIO SILVANO guilty beyond reasonable doubt of the crime of Rape with Homicide, he is hereby sentenced to suffer the penalty of reclusion perpetua and ordered to indemnify the heirs of victim Maramanay Tomas in the amount of P50,000.00 and to pay them moral damages of P50,000.00.

The accused is credited in the service of his sentence, with the full time during which he underwent preventive imprisonment. He is ordered committed to the Davao Penal Colony in Carmen, Davao del Norte from the Cotabato Rehabilitation Center, Amas, Kidapawan City.

SO ORDERED.[16]

Hence this appeal. Accused-appellant contends that –

I

THE COURT A QUO GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS CONSTANCIO JIMENEZ.

II

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE WITH HOMICIDE.

First. There is a need to scrutinize Constancio Jimenez's testimony because it is the basis of accused-appellant's conviction. On direct examination, Jimenez testified:

Q

Now, while you were there celebrating the birthday party of your child was there any unusual thing that took place?

A

In that birthday celebration the accused Antonio Silvano told us that he raped and killed a Muslim child, sir.

Q

What else did he [tell] you if any?

A

He told us that he is no longer interested in going back to Alamada because the policemen are looking for him, sir.

Q

Was there an instance if you know that he told you why he killed the Muslim?

A

He told us that he killed the child of the Muslim because he raped this child and if he will not kill the [M]uslim child, the child can testify against him, sir.

ATTY. ERAMIS

Before the Prosecution proceed[s] Your Honor we would like to put on record the objection by reason of hearsay evidence.

FISCAL DEIPARINE

We would like to put on record our opposition to that objection because there is an exception of the hearsay rule as an independent relevant statement.

COURT

The witness is not testifying as to the truth of his statement. He is only testifying in connection with the statement given by the accused to him on December 3, 1995. Proceed.

FISCAL DEIPARINE

What else did the accused tell you if any?

A

He told us that a tubao or head band made of cloth and a knife [was] left [on] the scene of the crime, sir.

Q

What else did he tell you if any?

A

He told us that he raped that Muslim child and after that he killed and stabbed the child sir.

In convicting accused-appellant, the trial court relied on Jimenez's testimony and on what it considered as circumstantial evidence to justify accused-appellant's conviction. The trial court said in its decision:

There is no eyewitness in this case. The prosecution is banking on the admissions of the accused and on circumstantial evidence.

The query now before us is: are Antonio Silvano's admissions to Constancio Jimenez, a private party, admissible in evidence?

The court believes that the declaration of an accused expressly acknowledging his guilt of the offense may be given in evidence against him and any person, otherwise competent to testify as a witness, who heard the confession, is competent to testify as to the substance of what he heard and understood it.

In *People vs. Maqueda*, 242 SCRA 565, the Supreme Court ruled:

"Accordingly, Maqueda's admissions to Ray Dean Salvosa, a private party, are admissible in evidence against the former under Section 26, Rule 130 of the Rules of Court. In *Aballe vs. People*, this Court held that the declaration of an accused expressly acknowledging his guilt of the offense may be given in evidence against him and any person, otherwise competent to testify as a witness, who heard the confession, is competent to testify as to the substance of what he heard and understood it. The said witness need not repeat verbatim the oral confession; it suffices if he gives its substance."

In *People vs. Domantay*, G.R. No. 130612, May 11, 1999, a very recent case, the Supreme Court ruled:

"We agree with the Solicitor General, however, that accused-appellant's confession to the radio reporter, Celso Manuel is admissible. In *People vs. Andan*, the accused in a rape with homicide case confessed to the crime during interviews with the media. In holding the confession admissible, despite the fact that the accused gave his answers without the assistance of counsel, this court said:

"[A]ppellant's [oral] confessions to the newsmen are not covered by Section 12(1) and (3) of Article III of the Constitution. The Bill of Rights does not concern itself with the relation between a private individual and another individual. It governs the relationship between the individual and the State. The prohibitions therein are primarily addressed to the State and its agents." [17]

Jimenez was competent to testify only as to the substance of what he had heard, but not as to the truth thereof. However, despite its ruling during trial that it is admitting Jimenez's account as an independently relevant statement, the trial court considered the substance of accused-appellant's alleged statements to Jimenez as true and then proceeded to justify conviction of accused-appellant on circumstantial evidence. In its consideration of the contents of accused-appellant's alleged statements to Jimenez, the trial court treated them as an extrajudicial confession made to a private party, and not just as an independent relevant statement. This is error. As previously noted, Jimenez admitted on cross-examination that there was bad blood between him and accused-appellant. It was, therefore, improbable that accused-appellant went to Jimenez's house for the birthday of the latter's son, on the occasion of which accused-appellant confessed to the crime. It is even more improbable that accused-appellant confessed to the crime. It is even more improbable that accused-appellant made his confession in the presence of other people. Jimenez named three persons as being allegedly present when accused-appellant made his confession. These were Garcia Payot, Donita Payot, and Orlando Mojado.[18] However, not one of these persons

was presented to corroborate Jimenez's claim.

We are more inclined to believe accused-appellant's claim that on the date in question he was in his house in Kapayawi, Libungan, Cotabato and that he had never gone to Sitio Mapurok, Alamada, Cotabato.[19] Accused-appellant denied Constancio Jimenez's allegation that he had transferred residence several times, as well as Onotan Tomas' allegation that accused-appellant was his neighbor in Sitio Mapurok, Alamada, Cotabato. Accused-appellant maintained that he had been a resident of Kapayawi, Libungan, Cotabato since his childhood.[20]

Second. There is no evidence that the victim was raped. However, in finding that the victim had been raped, the trial court stated:

Dr. Demetillo testified that he also examined the [genitalia] of the victim but he did not enter any finding in the report as he did not find any (TSN, October 29, 1998, pp. 12-13).

The Supreme Court consistently ruled that a medical certificate is not [indispensable] to prove the commission of rape (People vs. Quaimco, 268 SCRA 516; People vs. Ederalino, 271 SCRA 189; People vs. Bugarin, 273 SCRA 384; People vs. Zaballero, 274 SCRA 627). The Highest Court also consistently ruled that lack of lacerated wounds does not negate sexual intercourse (People vs. San Juan, 270 SCRA 693; People vs. Erardo, 277 SCRA 643; People vs. Gabayron, 278 SCRA 78; People vs. Betonio, 279 SCRA 532; People vs. Oliva, 282 SCRA 470).

The trial court is correct in ruling that the absence of lacerated wounds in the genitalia does not necessarily mean that rape had not been committed. Rape, however, is never presumed. We agree with the Solicitor General, who recommends that accused-appellant be absolved of the charge of rape, [21] that there must at least be some evidence of finger grips and contusion on the body of the victims, torn garment, and lacerations, redness, and swelling, especially of the genital area, to prove rape.[22]

Indeed, not only is there no proof of rape in this case but the witness for the prosecution who conducted the necropsy categorically stated that he did not have any findings concerning victim's genitalia.

Third. Nor can accused-appellant be held responsible for the death of the victim. Evidence showing a mere possibility of guilt is insufficient to warrant a conviction. In this case, the trial court stated —

Section 4, Rule 133 of the Rules of Court provides that 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.

From the very start of the investigation, accused Silvano was the principal suspect (Opposition to Motion to Quash, p. 27, Record). After the incident, the accused left Macabasa, Alamada and transferred his residence to Midsayap, Cotabato and finally at Libungan, Cotabato where he was arrested. The accused's flight is a strong indication of guilt (People vs. Vitor, 245 SCRA 620) for flight evidences culpability and a guilty conscience, and it strongly indicates a guilty mind or betrays the existence of a guilty conscience (People vs. Salvame, 270 SCRA 766). The accused never explained why he fled after the incident took place. The accused's admission is corroborated by evidence of corpus delicti e.g. the corpse of victim Maramanay Tomas. The accused's admission that he stabbed and killed the victim is further corroborated by the findings of Dr. Ebenezer Demetillo that the victim sustained twenty-one (21) stab wounds. (TSN, October 29, 1998, p. 8; Exhibits "B-4" and "B-5").[23]

There is no circumstantial evidence to show accused-appellant's guilt:

- Disregarding accused-appellant's alleged admission, the only factual circumstance left is that of flight. Even this is in question in the face of accused-appellant's assertion that he is actually a resident of Brgy. Kapayawi,

Libungan, Cotabato since childhood.

- The assertion that accused-appellant was a principal suspect from the start of the investigation is not corroborated by evidence.
- There is no proof that accused-appellant was, or could have been, in the place and at the time of the commission of the crime in question.
- The injuries sustained by the victim Maramanay Tomas, do not indicate the probability that accused-appellant raped and killed her, if at all.
- The tubao allegedly found near the cadaver of the victim and turned over to the police was not identified, marked, and offered as evidence nor in any case shown to belong to accused-appellant.

As we have held:

Accused-appellant's conviction by the trial court hinged on circumstantial evidence. To validly invoke circumstantial evidence, it must be shown that there is more than one circumstance and the facts from which the inferences derived are proven. The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The circumstances must constitute an unbroken chain of events that can reasonably lead to the conclusion pointing to the accused to the exclusion of all others as the author of the crime. . . . Like a tapestry made of strands which create a pattern when interwoven, a judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.[24]

Fourth. The prosecution thus failed to prove accused-appellant's guilt beyond reasonable doubt. To secure a conviction, it is not enough that the evidence establishes a strong suspicion or even a probability of guilt. Moral certainty that the accused committed the crime is required.[25] That alibi (which accused-appellant invokes) is the weakest defense is irrelevant. For when the prosecution fails to discharge its burden, an accused need not even offer evidence in his behalf.[26]

WHEREFORE, the decision of the Regional Trial Court, Branch 18, Midsayap, Cotabato, finding accused-appellant Antonio Silvano guilty of the crime of rape with homicide and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim Maramanay Tomas P50,000.00 as civil indemnity and P50,000.00 as moral damages, is hereby REVERSED and SET ASIDE. Accused-appellant ANTONIO SILVANO is ACQUITTED on ground of reasonable doubt and is ordered immediately released unless he is lawfully held in custody for another cause.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within 5 days upon receipt hereof.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, De Leon, Jr., and Corona, JJ., concur.

[1] Per Judge Rasad G. Balindong.

[2] Rollo, p. 7.

[3] Id., pp. 1-2.

- [4] Records, p. 2.
- [5] Id., p. 36.
- [6] TSN (Samotor Polayagan), pp. 4-7, May 22, 1997; TSN (Onotan Tomas) pp. 14-15, May 22, 1997.
- [7] TSN (Samotor Polayagan), pp. 4-6, 10, May 22, 1997.
- [8] Id., p. 11.
- [9] TSN (Dr. Ebenezer Demetillo), pp. 9, 11, 12-13, Oct. 29, 1998.
- [10] TSN (Constancio Jimenez), p. 5, March 22, 1995.
- [11] Id., p. 9.
- [12] Id., pp. 9-10.
- [13] TSN (Onotan Tomas), pp. 13-17, May 22, 1997.
- [14] Order, March 4, 1999; Records, p. 137.
- [15] TSN (Antonio Silvano), pp. 6-7, March 14, 2000.
- [16] Decision, p. 8; Records, p. 169.
- [17] Decision, pp. 3-4; Rollo, pp. 16-17.
- [18] TSN, p. 5, March 22, 1995.
- [19] TSN (Antonio Silvano), pp. 3-7, March 14, 2000.
- [20] Id., p. 3.
- [21] Rollo, p. 107; Brief for Plaintiff-Appellee, p. 27.
- [22] Id., p. 104; id., p. 24.
- [23] Decision, p. 5; Rollo, p. 18.
- [24] People v. Comesario, 306 SCRA 400, 404 (1999) (footnotes omitted).
- [25] People v. Ang-Nguho, 314 SCRA 480 (1999).
- [26] People v. Marcos, 305 SCRA 1, 13 (1999).

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