

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO PASCUAL Y ILDEFONSO, ACCUSED-APPELLANT.

G.R. No. 172326. January 19, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Under review is the Decision[1] dated December 9, 2005 of the Court of Appeals (CA) in CA-G.R. CR.-HC No. 01493 finding accused-appellant Alfredo Pascual y Ildefonso alias "BOYET" guilty beyond reasonable doubt of the crime of Rape with Homicide and sentencing him to suffer the penalty of death. Said decision affirmed that of the Regional Trial Court (RTC), Branch 211, Mandaluyong City, albeit with the modification that granted an additional award of P100,000.00 as civil indemnity to the heirs of the deceased-victim.

The conviction of accused-appellant stemmed from an Amended Information[2] dated February 23, 2001, filed with the RTC for the crime designated as Rape with Homicide and Robbery, the accusatory portion of which reads:

That on or about the 25th day of December 2000 in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by the use of force and intimidation, did then and there willfully, unlawfully and feloniously, lie and have carnal knowledge of one LORELYN PACUBAS y TAMAYO, against the latter's will and consent.

During the occasion or by reason of the rape with intent to kill and taking advantage of superior strength, covered the face of said victim with a pillow, thus suffocating her which ultimately led to her instantaneous death. Likewise, during or on occasion of the rape with intent to gain and by means of force, violence and intimidation employed upon the person of Lorelyn Pacubas y Tamayo, did then and there willfully, unlawfully and feloniously take, steal and carry away the following, to wit:

a). one (1) gold necklace with pendant

b).

one (1) pair of gold earring

c). college ring

d). Seiko lady's wristwatch

all in the total amount of P10,000.00 more or less, belonging to victim Lorelyn Pacubas y Tamayo, to the damage and prejudice of the latter.

When arraigned, appellant pleaded not guilty to the charge. Trial thereafter ensued.

During trial, the prosecution presented seven (7) witnesses; namely, Rodolfo Jundos, Jr. and Arlene Gorospe, both neighbors of the victim; Eduardo Velasco, a friend of the victim's sister; Police officers (PO)2 Fernando Aguilan and Police Inspector (P/Insp.) Russel Leysa; Dr. Felimon Porciuncula, Jr., the Philippine National Police (PNP)

medico-legal officer; and Lorenza Pacubas, the victim's mother. The prosecution's version of the facts, as narrated in the decision under review, follows:

The incident xxx happened in a room at the second floor of House No. 724, Ballesteros St., Barangay New Zaniga, Mandaluyong City. The sketch of the house (Exh. A, p. 148 Records) shows it has three (3) rooms; on the first floor, one occupied by Arlene Gorospe and family (exh. A-1); the second, by Alfredo Pascual and his family (Exh. A-2); and the third is the residence of Rodolfo Jundos, Jr. and his family. On the second floor is another room occupied by the family of the victim Lorelyn Pacubas y Tamayo (alias Ling-Ling) and her siblings.

Last December 24, 2000, at around 10:00 o'clock in the evening, Rodolfo Jundos, Jr. was preparing to celebrate noche buena with his son and the accused-appellant, Alfredo Pascual who was with Christopher, his 2-year old youngest child. Alfredo Pascual appeared to have had liquor already. For three (3) instances, the accused would ask permission to go inside the house as he was already sleepy and drunk but nonetheless will return 10 to 15 minutes later, twice still with the child and only to continue drinking every time he returned. On the third time, he was without the child anymore and partake (sic) of liquor until 1:00 o'clock a.m. when he left, leaving Rodolfo Jundos, Jr. alone just outside the aforesaid house at 724 Ballesteros St. (Exh. A-8). Twenty (20) minutes later, Divina Pascual, appellant's wife, came out the house looking for her husband. When informed that the latter had already left, Divina started looking for him inside the house and later in the billiard hall 10 or 15 minutes away. Moments later, Divina went passed (sic) the place where Rodolfo Jundos, Jr. was drinking, rushing upstairs to the second floor of the house. Soon after, Jundos saw Divina chasing Alfredo running out towards the gate at the same time asked (sic) Jundos for help saying "Kuya, tulungan mo ako, si Boyet" (referring to Alfredo Pascual)). Thinking that Alfredo Pascual was making trouble, Rodolfo Jundos, Jr. joined the chase but could not catch up as Alfredo was running very fast. So Divina told him to instead go upstairs as the accused might have done something wrong to Ling-ling (Lorelyn) [T.S.N. pp. 4-11, October 24, 2002]. Rodolfo Jundos, Jr. is the husband of appellant's older sister, Laarni.

Together, Jundos and Divina rushed to the second floor. As the place was dark, they switched on the light and there they saw Ling-ling (Lorelyn Pacubas) flat on her back on the floor almost naked with arms and legs open, her panty and shorts down to her ankle and t-shirt pulled up above the breast with blood on the right breast. They tried to wake up Ling-ling but the latter was already dead. Rodolfo Jundos, Jr. was shocked at what he saw. Divina got hysterical and repeatedly told Arlene Gorospe what happened (T.S.N., supra, pp. 11-14). It did not take long before policemen from the Southern Command (SOCO) arrived.

That same morning Rodolfo Jundos, Jr. gave his statement before PO2 Fernando Aguilan (Exh. C, p. 150 Records) and so did Divina Gorospe Pascual (Exh. D, p. 151). Arlene Gorospe likewise executed his Sinumpaang Salaysay that same day, December 25, 2000, before Police Inspector Efren Pascua Jugo. (Exh. B, p. 149, Records) It was this witness Arlene Gorospe who prepared the sketch (Exh. A, p. 148, Records). Later in (sic) that fateful morning, police investigators appeared in (sic) the scene of the incident and took pictures of the place and the victim while still lying on the floor (Exhs. E, E-1 to E-7 and F-1 to F-5 xxx, p. 152, Records).

After proper police investigation and coordination, the victim, Lorelyn Pacubas, was brought to the PNP Crime Laboratory, for autopsy and the examination of the blood found in the place of the incident (Medico Legal Report No. S 056 00, Exh. M, p. 162, Records). The printed underwear with suspected seminal stains was likewise examined. Medico-Legal Report No. R-007-00 (Exh. N, p. 163, Records) reveal absence of semen. In Medico-Legal Report No. M 932 00 (Exh. O, p. 164, Records), it was determined that the cause of death was asphyxia by smothering. The same report gave the following postmortem findings on the injuries sustained by the victim:

POSTMORTEM FINDINGS

Fairly developed, fairly nourished, female cadaver in rigor mortis with postmortem lividity at the dependent

portions of the body. Conjunctivae are pale. Lips and nailbeds are cyanotic.

HEAD

- 1) Lacerated wound, upper lip, measuring 0.8 x 0.5 cm, along the anterior midline.
- 2) Contusion, right cheek, measuring 5 x 4 cm, 7 cm from the anterior midline.

TRUNK

- 1) Contusion, right pectoral region, measuring 3 x 2 cm, 11 cm from the anterior midline.
- 2) Lacerated wound, right nipples, measuring 0.6 x 0.1 cm.
- 3) Contusion, right pectoral region, measuring 5 x 4 cm, 10 cm from the anterior midline.
- 4) Contusion, sternal region, measuring 3 x 1 cm, along the anterior midline.
- 5) Contusion, left inguinal region, measuring 5 x 3.5 cm, 10 cm from the anterior midline.

The stomach is full of partially digested food particles.

EXTREMITY

- 1) Contusion, proximal 3[rd] of the right forearm measuring 4 x 2 cm, 4 cm lateral to its posterior midline.
- 2) Contusion, right ring finger, measuring 0.5 x 0.3 cm.

LARYNX, TRACHEA AND ESOPHAGUS

The larynx, trachea and esophagus are markedly congested and cyanotic with petechial hemorrhages.

xxx xxx xxx

GENITAL

There is abundant growth of pubic hair, labia majora are full, convex and coaptated with pinkish brown labia minora presenting in between. On separating the same disclosed a fleshy type hymen with deep healed lacerations at 3, 6 and 9 o'clock positions with an abraded posterior fourchette, measuring 1 x 0.4 cm.

Vaginal and peri urethral smears are POSITIVE for spermatozoa.

xxx xxx xxx

CONCLUSION:

Cause of death is Asphyxia by smothering. (p. 164, Records)

with the corresponding location of the said wounds on the attached sketches of the head (Exh. P, p. 165, Records) and the human body in the anatomical sketch (Exh. Q, p. 166, Records).[3] (Emphasis ours)

Accused-appellant denied the charges against him. He alleged that on December 24, 2000, he was drinking with Rodolfo Jundos, Jr. and the latter's son outside their residence from 10:00 p.m. until 1:00 a.m. of December 25, 2000. When he came home, he had a fight with his wife Divina Pascual (Divina) because the latter allegedly wouldn't permit him to go to a friend's house in Sta. Mesa, Manila, as he was already drunk. Nonetheless, so accused-appellant claims, he still went to Sta. Mesa and stayed at his friend's house for more or less six days.[4] Upon learning from his wife that Lorelyn Pacubas was raped and killed and that he was the suspect therein, he requested his wife to contact and coordinate with Major Peñalosa for his voluntary surrender. On

cross-examination, accused-appellant admitted that he knew Lorelyn Pacubas was staying alone on the second floor of the house on that fateful night, as her two (2) other siblings had already gone home to the province.[5] Moreover, he admitted having called his wife on December 25, 2000, and was then told about the crime which happened to Lorelyn Pacubas and that he was the suspect thereof.[6]

Defense witness Carlito Santos (Carlito) corroborated accused-appellant's testimony of having stayed in his house for six (6) days. Carlito testified that at about 2:00 o'clock in the early morning of December 25, 2000, accused-appellant arrived at his (Carlito's) house and told the witness that he (accused-appellant) had a fight with his wife, Divina.[7]

Another defense witness, Aida Vilorio-Magsipoc, forensic chemist of the National Bureau of Investigation (NBI), testified on the result of the DNA analysis which she conducted on the specimens submitted by the trial court consisting of the victim's vaginal smear and panty. According to her, no DNA sample from the suspect was present on the aforesaid specimens.[8] On cross-examination, she declared that based on DNA testing, she could not determine if a woman was raped or not. She further declared that in this case, it was possible that the stained vaginal smear prevented a complete and good result for the DNA profiling. Upon being questioned by the court, the forensic chemist confirmed that DNA testing on the subject specimens was inconclusive and that the result was not good, as the specimens submitted, i.e., the stained vaginal smear and the dirty white panty, had already undergone serological analysis.[9]

In a decision[10] dated March 11, 2004, the trial court rendered judgment, as follows:

WHEREFORE, finding accused, ALFREDO PASCUAL Y ILDEFONSO alias "BOYET" GUILTY beyond reasonable doubt of the crime of Rape with Homicide, under the circumstances prescribed in Article 266-A of the Revised Penal Code, as amended, absent any modifying circumstance to aggravate or mitigate criminal liability, the court hereby sentences him to suffer the penalty of DEATH.

He is also ordered to pay the heirs of the victim the amount of Php63,000.00 as actual damages; the amount of Php50,000.00 as moral damages; the amount of Php25,000.00 as exemplary damages; Php28,000.00 as burial expenses and the amount of Php250,000.00 for loss of earnings. Additional actual expenses incurred not supported by receipts are denied pursuant to Article 2199 of the Civil Code.

In so far as the charge of robbery is concerned, the same is hereby ordered DISMISSED, it appearing that the valuables and other personal belongings of the victim are intact.

The accused is likewise ordered to pay the costs of the suit.

SO ORDERED.[11]

The case was directly elevated to this Court for automatic review. However, in a Resolution[12] dated July 26, 2005 and pursuant to our ruling in *People v Mateo*[13] the case was transferred to the CA.

In its Decision[14] dated December 9, 2005, the CA affirmed with modification the trial court's decision. Dispositively, the CA decision reads:

IN VIEW OF ALL THE FOREGOING, the appealed decision is hereby AFFIRMED with the modification that the heirs of Lorelyn Pacubas is further awarded the amount of P100,000.00 as civil indemnity, in addition to the other damages in the lower court's judgment. Costs de officio.

SO ORDERED.

In view of the foregoing, accused-appellant comes again to this Court for a final review of his case.

In a Resolution[15] dated June 13, 2006, the Court required the parties to file their respective supplemental briefs, if they so desired. In their respective Manifestations,[16] the parties waived the filing of supplemental briefs and instead merely adopted their earlier briefs before the CA.

Two (2) questions present themselves for resolution in this case. First, was the circumstantial evidence presented against the accused-appellant sufficient for his conviction? Second, does the result of the DNA examination entitle the accused-appellant to an acquittal?

We answer the first question in the affirmative.

It is settled that in the special complex crime of rape with homicide, both the rape and the homicide must be established beyond reasonable doubt. [17] In this regard, we have held that the crime of rape is difficult to prove because it is generally unwitnessed and very often only the victim is left to testify for herself. It becomes even more difficult when the complex crime of rape with homicide is committed because the victim could no longer testify. Thus, in crimes of rape with homicide, as here, resort to circumstantial evidence is usually unavoidable.[18]

Considering that no one witnessed the commission of the crime charged herein, the weight of the prosecution's evidence must then be appreciated in light of the well-settled rule that an accused can be convicted even if no eyewitness is available, as long as sufficient circumstantial evidence is presented by the prosecution to prove beyond doubt that the accused committed the crime. [19]

Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.[20] Under Section 4, Rule 133 of the Revised Rules of Court, circumstantial evidence is sufficient for conviction if the following requisites concur:

- (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and (c) the combination of all the circumstances is such as to warrant a finding of guilt beyond reasonable doubt.

Verily, for circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with each other, consistent with the hypothesis that accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.[21] Thus, a judgment of conviction based on circumstantial evidence can be sustained only when the circumstances proved form an unbroken chain which leads to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the culprit.

Here, the circumstances testified to by the prosecution witnesses lead to the inevitable conclusion that the accused-appellant is the author of the crime charged.

The chain of events that led to the subject unfortunate incident was candidly narrated by Rodolfo Jundos, Jr. Said witness testified that on December 24, 2000 at 10:00 p.m., he, together with his family and other relatives, was preparing for their small celebration outside the house; that accused-appellant (who appeared to be already drunk) was also there together with his 2-year-old child; that accused-appellant stayed with them up to 1:00 a.m. of December 25; that during the course of his stay with the group, accused-appellant left twice to go inside the house but kept on coming back to continue drinking; that when accused-appellant left for the third time, he did not come back anymore leaving him (Jundos) alone as his son, Christopher, also left to go to some other place.[22] Some 20 minutes later, accused-appellant's wife, Divina, asked him about the whereabouts of the accused-appellant and he instructed her to look for her husband in several places. Having failed to locate accused-appellant, Divina went back inside the house.[23] What transpired next can be gleaned from the following pertinent portions of Jundos'

testimony:

"Q

-

When you are still on that particular place where you are drinking alone, do you remember any unusual incident that happened?

A

-

Yes sir.

Q

-

What is that incident?

A -

Nong umuwi na po si Divina sa kanila nong sinabi nya na napapagod na sya, maya-maya po ay nakita ko si Divina na nag-tatatakbo, dumaan po doon sa harap ko at nag-tatatakbo patungong itaas po'.

Q - Itaas ng?

A - Second floor sir.

xxx

Q

-

And what happened after Divina went up stairs of the second floor?

A

-

Nakita ko po na naghahabulan si Divina at yong asawa nya si Alfredo Pascual.

Q

-

Did you see where did they came from?

A

-

`Hindi ko po nakita kong saan sila naggaling, ang nakita ko lang dito po sa gilid ko papuntang gate.

Q

-

So, you see them coming out of that building and proceeding towards the gate?

A

-

Yes sir.

Q

-

And who was ahead?

A

-

Alfredo Pascual sir.

Q

-

And what was Divina doing at that time?

A

-

She's chasing Alfredo Pascual.

Q

-

Did you hear her saying something?

A

-

Yes sir.

Q

-

What [did] she say?

A

-

Humihingi po sya sa akin ng tulong, sabi nya po, "kuya tulongan mo ako si Boyet" kasi ang palayaw po ni Alfredo Pascual e Boyet.

Q

-

And what was your interpretation then when you heard her asking for your help, this Divina, the wife of the accused?

A

-

`Ang pagkaintindi ko po na humihingi si Divina ng tulong, akala ko po nagwala kasi lasing po, kaya humihingi po ng tulong yong asawa, kaya (po) ako po'y tumakbo doon at naki-nakipaghabol po sa kanila'.

Q

-

And what happened next after that?

A

-

`Tumakbo rin po ako at nakihabol rin ako sa kanila, pero nong nandoon na po ako sa kalsada, yong street po naming Ballesteros, nasa kalagitnaan na po ako, nakita ko na po si Divina at sinalubong na po ako, ang sabi sa akin, "kuya hindi na maabutan kasi mabilis tumakbo tulungan mo nalang ako, samahan mo ako, aakyat tayo sa taas kasi baka kung anong ginawa nya don kay Ling-Ling, the victim in this case".

Q

-

So, what did you do when Divina ask for your assistance?

A

-

`Sinamahan ko po, umakyat po kami sa second floor at nakita namin sa second floor, madilim, parang walang sindi ang mga ilaw'.

Q

-

What was the condition of the door going inside the second floor when you went up?

A

-

Open sir.

Q

-

And did you and Divina do when you were already (inside) in the second floor?

A

-

`Hinanap po nami yong mga switches, kasi ako po bihirang bihira po akong makaakyat don kaya sabi ko kay Divina hanapin natin yong switch kasi hindi ko kabisado rito, yon kinakapa po naming kong saan po yong mga switches, habang kinakapa po naming yong mga switches tapos pinupukpok ko po yong dingding tapos

nag-tatawag po ako ng pangalan ni Ling-Ling, "Ling saan ka naroon".

Q

-

And then what happened next?

A

-

`Yan po habang hinahanap po naming yong mga switches at kinakatok po naming yong mga dingding bigla pong sumigaw si Divina na "kuya halika dito" ng marining ko po na tinatawag yong pangalan ko e lumapit po ako kung saan sya naroon".

Q

-

What happened next?

A

-

`Nandon po sya sa loob ng kwarto, bukas po yong pinto, doon nakita ko po si Ling-Ling, yong biktima.

Q

-

Where was the victim at the first time or instance that you saw her at that particular time?

A

-

At the floor sir.

Q

-

What was the physical appearance of the victim when you first saw her?

A

-

When I first saw the victim she was lieing (sic) in the floor with open arms (sic) and open legs and her short and panty was already loose off down to her ankle and her (the) shirt is up.

Q

-

Up to where?

A

-

`Nakataas po, labas ang kanyang "didi" at nakita ko pong may dugo sa gilid".

Q

-

Where did you find the blood?

A

-

On her left side breast sir.

Q

-

On that particular instance, when heard Divina calling for help, was there already light inside that house?

A

-

There was a light sir.

Q

-

Where was that light coming from?

A

-

Came from the ceiling.

Q

-

Inside the room where Divina found the body of the victim?

A

-

Yes sir.

xxx

Q

-

When you first enter that room where you find the body of the victim Lorelyn Bacubas, what was the condition of the room?

A

-

`Nakita ko po na magulo yong kama tapos yong drawer na lagayan ng mga damit kasi salamin po yong ibaba may mga basag po at may mga patak ng dugo'.

Q

-

What else did you find?

A

-

`May scissor po sa left side ng braso nya, sa gilid po'.

xxx

Q

-

What did you do when you saw the victim in this case already sprawled on the floor?

A

-

`Nung nakita na naming hindi na gumagalaw si Ling-Ling at ang pagkaalam namin ay patay na, bumaba na po kami'.

xxx

Q

-

After you went down, what did you do next?

A

-

`Pag-baba po namin ni Divina, tumakbo po kami don sa pinto, sa bahay po ng bayaw ko at humingi po kami ng tulong'.

Q

-

Who is your brother-in-law?

A

-

Arleen Gorospe sir.

xxx

Q

-

What did you do with Arleen Gorospe?

A

-

`Pag-bukas po ng pinto, una pong pumasok si Divina at nag-hysterical na nagsisigaw na Manang Rose, yong asawa po ni Arleen Gorospe, si Ling-Ling ginahasa at pinatay ni Boyet'.

Q

-

And what next happened?

A

-

`Sinalaysay po ni Divina, pero ako po'y na shock at napaupo na lang ako sa sofa, umakyat din po si Arleen sa taas at may tumawag na rin ng pulis".[24] (Emphasis Ours)

Arlene Gorospe corroborated the testimony of Jundos that in the early morning of December 25, 2000, Jundos and the accused-appellant's wife, Divina, knocked at his door to inform him of the incident after which he immediately proceeded upstairs and saw the victim naked and lifeless with her t-shirt pulled up.[25]

Prior to the discovery of her dead body, Jundos also testified that the victim was alone in her room on the second floor of the house.[26] This fact was known to accused-appellant who admitted as much in his cross-examination.[27] Eduardo Velasco, who used to visit the sister of the victim and have drinks with accused-appellant, testified that the latter confided to him his love for the victim.[28]

PO2 Fernando Aguilan and P/Insp. Russel Leysa testified that upon arrival at the place where the subject incident happened on December 25, 2000 at about 2:30 a.m., they found the lifeless body of the victim lying on the floor naked, with bloodstain on her clothes and appearing lifeless.[29] The police also found at the scene of the crime the victim's belongings scattered all over the place.

Dr. Felimon Porciuncula, who conducted the post-mortem examination on the cadaver of the victim on the morning of December 25, 2000, testified that the victim died of asphyxia by smothering. The doctor also testified that apart from contusions, "hymenal lacerations were discovered on the body at 3, 6 and 9 o'clock positions, but there is an abrasion or abraded posterior... meaning that the injury was fresh"[30] or was inflicted right before the death of the victim.[31] Dr. Porciuncula further testified that spermatozoa was found in the vagina of the victim.[32]

Furthermore, the statements of accused-appellant's wife, Divina, immediately after the fateful incident all the more convince the Court as to accused-appellant's guilt. Part of the res gestae and admissible in evidence as an exception to the hearsay rule were Divina's utterances to Gorospe after seeing the dead and raped body of the victim, i.e., "May nagyari sa itaas at galing doon si Boyet," and her subsequent narration of seeing the accused-appellant going out of the victim's room and running away therefrom.[33]

In *People v Cantonjos*[34] the Court held that:

Res gestae utterances refer to those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement. A declaration is deemed part of the res gestae and thus admissible in evidence as an exception to the hearsay rule when the following requisites concur: (1) the principal act, the res gestae, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements must concern the occurrence in question and its immediately attending circumstances.

The aforementioned requisites are present in this case. The res gestae or the startling event is the rape and death of the victim. The statements of Divina to Gorospe were made spontaneously and before she had the time to contrive or devise such declarations, and said statements all concerned the occurrence in question or the immediately attending circumstances thereof.

In the absence of evidence that the witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.[35]

Here, accused-appellant claimed that at 2 o'clock on the morning of December 25, 2000, he was at his friend's house in Sta. Mesa, having left his house in Mandaluyong because of a quarrel with his wife, Divina. Prosecution witness Jundos' testimony, however, positively placed the accused-appellant near the scene of the crime at the same time on December 25, 2000. Surely, between the positive assertions of the prosecution witness and the negative averments of accused-appellant, the former indisputably deserve more credence and evidentiary weight.[36]

Thus, accused-appellant's twin defenses of denial and alibi pale in the light of the array of circumstantial evidence presented by the prosecution. Equally damning is accused-appellant's failure to prove with clear and convincing evidence that he was at another place at the time the crime was committed or to demonstrate the impossibility of his presence at the scene of the crime when the same was committed.

Denial is intrinsically a weak defense and must be supported by strong evidence of non-culpability in order to be credible. Correspondingly, courts view the defense of alibi with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily. [37]

Furthermore, this Court cannot ignore the positive testimony on record that accused-appellant was seen running away from the scene of the crime immediately before the discovery thereof. If accused-appellant was as innocent as he claimed to be, he should have immediately cleared himself of suspicion. Instead, accused-appellant stayed at his friend's house for six or seven days, despite having learned from his wife he was a suspect in the crime. Undoubtedly, accused-appellant's flight is an indication of his guilt or of a guilty mind. "Indeed, the wicked man flees though no man pursueth, but the righteous are as bold as a lion." [38]

Accused-appellant makes much of the result of the DNA analysis conducted by the NBI that his profile was not in the victim's vaginal smear. Hence, he argues he is innocent of the crime charged.

In *People v Yatar*, we held that in assessing the probative value of DNA evidence, courts should consider, inter alia, the following factors: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.[39]

Here, while the DNA analysis of the victim's vaginal smear showed no complete profile of the accused-appellant, the same is not conclusive considering that said specimen was already stained or contaminated which, according to the forensic chemist, Aida Villoria-Magsipoc, deters a complete and good result for DNA profiling. She

explained in her testimony that generally, with the vaginal smear, they could see if there is a male profile in the smear. However in this case, when they received the vaginal smear on the stained slide, the same had already undergone serological analysis. Hence, according to the chemist, the DNA testing conducted on the specimen subject of this case was inconclusive.[40] In light of this flawed procedure, we hold that the result of the DNA examination does not entitle accused-appellant to an acquittal.

Viewed in its entirety, the evidence in this case inevitably leads to the conclusion that accused-appellant is guilty beyond reasonable doubt of the special complex crime of Rape with Homicide.

Rape with Homicide under Article 335 of the Revised Penal Code, in relation to Republic Act (R.A.) 7659, provides that when by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. However, in view of the subsequent passage of R.A. No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," which was signed into law on June 24, 2006, the Court is mandated to impose on the accused-appellant the penalty of reclusion perpetua.

We likewise affirm the CA's additional award of P100,000.00 as civil indemnity pursuant to current jurisprudence[41] that in cases of rape with homicide, civil indemnity in the amount of P100,000.00 should be awarded to the heirs of the victim. As to moral damages, recent jurisprudence allows the amount of P75,000.00 to be awarded in cases of rape with homicide.[42] Thus, the P50,000.00 award given by the court below as moral damages should be increased to P75,000.00. The P25,000.00 exemplary damages, however, should be deleted because under Article 2230 of the New Civil Code, exemplary damages in criminal cases may be imposed when the crime was committed with one or more aggravating circumstances, and there is none in this case. The rest of the awards given by the trial court are affirmed.

WHEREFORE, the appealed decision of the CA in CA-G.R. CR HC No. 01493 is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant is found guilty beyond reasonable doubt of the crime of rape with homicide and is hereby sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of the victim, Lorelyn Pacubas, the amounts of P100,000.00 as civil indemnity, P75,000.00 as moral damages, P63,000.00 as actual damages, P28,000.00 as burial expenses and P250,000.00 for loss of earnings.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and Brion, JJ., concur.

[1] Penned by now Presiding Justice Conrado M. Vasquez, Jr. with Associate Justice Juan Q. Enriquez and former Associate Justice Vicente Q. Roxas, concurring; rollo, pp. 3-23.

[2] CA rollo, pp.13-14.

[3] Rollo, pp. 3-6.

[4] TSN, September 8, 2003, p. 3; Records, p. 410

[5] TSN, October 6, 2003, p. 8; Records, p. 423

[6] Id. pp. 10-11; Records, pp. 425-426

[7] TSN, November 17, 2003, p. 3; Records, p. 436

- [8] TSN, June 11, 2003, p. 15; Records, p. 396
- [9] TSN, July 2, 2003, pp. 1-5; Records, pp. 399-403
- [10] CA rollo, pp. 29-54.
- [11] CA rollo, p. 111.
- [12] Id. at 165.
- [13] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640
- [14] Supra note 1.
- [15] Rollo, p. 25.
- [16] Id. at pp. 26-27 28-29.
- [17] People v. Nanas, G.R. No. 137299, August 21, 2001, 362 SCRA 452, 464.
- [18] Id.
- [19] People v. Yatar, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 513.
- [20] People v Darilay, G.R. Nos. 139751-52, January 26, 2004, 421 SCRA 45, 61.
- [21] Id.
- [22] TSN., October 24, 2002, pp. 3-6; Records, pp. 355-358.
- [23] Id., pp. 7-9; Records, pp. 359-361
- [24] TSN, October 24, 2002, pp. 9-13; Records, pp 361-365
- [25] TSN, October 17, 2001, p. 6; Records, p. 240
- [26] TSN, October 24, 2002, p. 6; Records, p. 366
- [27] TSN , October 6, 2003, p. 8; Records, p. 423
- [28] TSN, December. 5, 2002, p. 3; Records, p. 329.
- [29] TSN November 7, 2001, p. 2; Records p. 249.
- [30] TSN November 28, 2001 p. 8; Records, p. 313
- [31] Id, p. 19; Records, p. 324
- [32] Id. pp. 9-10; records, pp. 314-315.
- [33] TSN, October 17, 2001, p. 6; Records, p. 240
- [34] G.R. No. 136748. November 21, 2001, 370 SCRA 105, 118-119.
- [35] Velasco v. People, G.R. No. 166479. February 28, 2006, 483 SCRA 649, 668.
- [36] People v. Dela Cruz, G.R. No. 152176, October 1, 2003, 412 SCRA 503, 509.
- [37] People v. Dela Cruz, G.R. No. 152176. October 1, 2003, 412 SCRA 503, 508-509.
- [38] Id.

[39] Supra note 19, at p. 515.

[40] TSN, July 2, 2003, pp. 1-5; Records, pp. 399-403.

[41] People v. Sevileno, G.R. No. 152954, March 10, 2004, 425 SCRA 247, 257; People v. Darilay G.R. Nos. 139751-52, January 26, 2004, 421 SCRA 45, 64.

[42] People v. Sevileno, id. at p. 258.

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