

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESSIE MALIAO Y MASAKIT, NORBERTO CHIONG Y DISCOTIDO AND LUCIANO BOHOL Y GAMANA, ACCUSED, JESSIE MALIAO Y MASAKIT, ACCUSED-APP...

G.R. No. 178058. July 31, 2009

Ponente: QUISUMBING, Acting C.J.

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QUISUMBING, Acting C.J.

For automatic review before this Court is the Decision[1] dated August 2, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01299 affirming with modification the Decision[2] dated January 29, 2003 of the Regional Trial Court (RTC) of Olongapo City, Branch 75. The trial court had found accused Norberto Chiong, Luciano Bohol, and accused-appellant Jessie Maliao guilty beyond reasonable doubt as principals of the crime of rape with homicide.

In a Second Amended Information[3] dated April 28, 1998, Jessie Maliao, Norberto Chiong, and Luciano Bohol were charged of the crime of rape with homicide before the RTC of Olongapo City, as follows:

That on or about the seventeenth (17th) day of March, 1998, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with lewd design, and by means of force, violence or intimidation applied upon the person of one AAA,[4] a minor who is six (6) years of age, did then and there willfully, unlawfully and feloniously have carnal knowledge with said AAA, and in pursuance of their conspiracy and acting simultaneously or otherwise, and with the qualifying circumstances of treachery, [evident] premeditation and taking advantage of their superior number and strength to the said victim who is a minor and of tender age and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack, strangle and hit with a wooden stool said AAA which directly caused her death shortly thereafter, to the damage and prejudice of the parents of said AAA.

CONTRARY TO LAW.[5]

During arraignment on May 26, 1998, Maliao, Chiong and Bohol pleaded not guilty.[6] Thereafter, trial proceeded.

The prosecution presented the oral testimonies of Dr. Ronaldo Mendez, Senior Medico-Legal Officer of the National Bureau of Investigation (NBI), Dennis Alonzo, SPO2 Norberto Maninang, Jr., SPO3 Orlando Reyes, NBI Forensic Biologist I Pet Byron Buan, Atty. Alreuela Bundang Ortiz, Danilo Agrabio, Armando Tadeo, and Roel Santos. It also presented the testimonies of BBB and CCC, AAA's mother and grandaunt, respectively. The defense presented the testimony of accused Jessie Maliao.

The facts, culled from the records, are as follows:

AAA was born on December 21, 1991.[7] She was the daughter of BBB and DDD who reside at Block 12, Lot 6,

Gordon Heights, Olongapo City.[8]

AAA left her house at about 8:00 p.m. on March 17, 1998 to watch a television show in the adjacent house of her grandaunt, CCC. She was then wearing a white blouse, as testified to by BBB, her mother. Both BBB and CCC subsequently left to go to a mini-carnival. When CCC returned to her house, AAA was no longer there. When BBB and her husband, DDD, returned home, AAA was not yet in the house. The spouses looked for AAA in their neighborhood but they did not find her.[9]

At about noontime of the following day, March 18, 1998, the naked and lifeless body of AAA was found between two banana plants in a vacant lot near her house. The matter was reported to the police authorities of Precinct 5, Sta. Rita, Olongapo City. An investigation was conducted by the police authorities and a cartographic sketch of the suspect was prepared by an artist of the NBI.[10]

On March 21, 1998, the desk officer of Police Precinct 5 received a telephone call from a concerned citizen reporting that a bloodstained shirt was found in a vacant lot which was being used as a carnival. SPO2 Norberto Maninang, Jr., SPO4 Bonifacio Chavez and SPO2 Godofredo Ducut proceeded to the area and they found the t-shirt hanging on a plant. A police officer called for BBB, the mother of AAA, and she identified the t-shirt as the one worn by AAA in the evening of March 17, 1998. As the police officers were conducting an investigation in the area, SPO2 Maninang noticed a man who looked like the person in the cartographic sketch which he was carrying at the time. The police officers arrested the man who turned out to be accused-appellant Jessie Maliao. Upon interrogation, Maliao told the police officers that he was bothered by his conscience.[11]

On March 21, 1998, Maliao executed an extrajudicial confession before SPO3 Orlando C. Reyes. Before proceeding with the investigation, SPO3 Reyes advised Maliao of his constitutional rights in the presence of Atty. Areuela Bundang Ortiz. Maliao declared that he went home at about 10:00 p.m. of March 17, 1998 after having a drinking session with accused Bohol and Chiong and several others. After twenty minutes, Bohol and Chiong, together with AAA, arrived in his house and they asked him if he still wanted to drink but he declined the invitation. Bohol, Chiong and AAA then entered his house. He narrated he went out of his house because he did not want to drink anymore. But when he heard a groan, he went back inside his house and saw Bohol on top of AAA who was already naked while Chiong was seated on the wooden bed watching. When Bohol stood up, Chiong laid on top of AAA. Maliao confessed he just stood beside a cabinet and masturbated. He then watched Chiong stand up, take a small stool and use it to hit AAA on the chest and head. Bohol and Chiong then carried the bloodied body of AAA and told him to clean the room. He wiped the bloodstains in the room, on the clothes of AAA, and on the wooden bed and small stool. He threw the t-shirt of AAA at the lot behind his house and placed her short pants inside a sack which contained garbage. He also threw the curtains he used in wiping bloodstains at his house and hid the small stool. He did not know where Bohol and Chiong brought the body of AAA but was aware that the body was found the following day in a vacant lot in front of his house. After AAA was found, Bohol approached him and told him not to say anything or else he would be killed. He saw Chiong standing near a store. Maliao identified the t-shirt, curtains, small stool and wooden bench and human figures representing Bohol and AAA while the former was on top of the latter.[12]

Dr. Ronaldo B. Mendez, Medico-Legal Officer of the NBI, performed the autopsy on the body of AAA on March 20, 1998. He stated in his autopsy report that AAA's cause of death was traumatic head injury.[13] He testified that AAA sustained numerous abrasions and contusions on different parts of her body, hematoma on the forehead and scalp, fractures on the skull and complete laceration of her hymen at the 3 o'clock and 6 o'clock positions.[14]

After the prosecution rested its case, the accused Bohol and Chiong filed a Motion for Express Leave of Court to File Judgment on Demurrer which the RTC denied.

Among the accused, only Maliao put up a defense.

On January 29, 2003, the RTC rendered a decision finding all the accused guilty beyond reasonable doubt and sentenced them to suffer three death penalties, as follows:

WHEREFORE, finding all accused guilty beyond reasonable doubt as charged, this Court hereby sentences them each to suffer three (3) death penalties. They are further ordered jointly and severally to indemnify in the amount of P100,000.00 ... the heirs of the victim; P100,000.00 for moral damages and to pay the costs of the proceedings.

SO ORDERED.[15]

Pursuant to *People v. Mateo*,^[16] this case was first referred to the Court of Appeals for appropriate action and disposition.

The Court of Appeals, in a Decision dated August 2, 2006, affirmed with modification the decision of the RTC by finding accused Maliao guilty not as principal but as an accomplice to the crime as well as modifying the damages awarded. The dispositive portion of the decision reads:

WHEREFORE, the Decision appealed from is AFFIRMED with MODIFICATION, by finding accused-appellants Norberto Chiong y Discotido and Luciano Bohol y Gamana guilty as principals in the crime of rape with homicide and sentencing each of them to two (2) reclusion perpetua, and finding accused-appellant Jessie Maliao y Masakit guilty as accomplice in the same crime and sentencing him to an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of prision mayor, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, as maximum.

The accused-appellants are further ORDERED to pay the heirs of AAA the amounts of P200,000.00 as civil indemnity, P200,000.00 as moral damages and P50,000.00 as exemplary damages, with the principals being solidarily liable for P150,000.00 as civil indemnity, P150,000.00 as moral damages and P35,000.00 as exemplary damages and subsidiarily for the accomplice, and the accomplice being liable for P50,000.00 as civil indemnity, P50,000.00 as moral damages and P15,000.00 as exemplary damages and subsidiarily for the civil liability of the principals.

SO ORDERED.[17]

From the Court of Appeals, the case was then elevated to this Court for automatic review. In separate Manifestations, appellee, through the Office of the Solicitor General (OSG), and appellant Maliao, through the Public Attorney's Office (PAO), informed the Court that they were no longer filing supplemental briefs and will merely adopt their briefs before the Court of Appeals as their supplemental briefs.

Accused-appellant Maliao raises the following issues:

I.

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN ADMITTING IN EVIDENCE THE ALLEGED EXTRAJUDICIAL CONFESSION OF THE ACCUSED-APPELLANT.

III.

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY IN THE CASE AT BAR.[18]

The only issue to be resolved is: Was accused-appellant Maliao's guilt as accomplice in the crime of rape with homicide proven beyond reasonable doubt?

The appeal, in our view, lacks merit. Appellant Maliao's conviction as accomplice in the crime of rape with homicide must be sustained.

The Court of Appeals correctly held that despite the inadmissibility of his extrajudicial confession, Maliao is not entitled to an acquittal. Citing *People v. Culala*,[19] the Court of Appeals rightfully noted that the extrajudicial confession of an accused who was assisted by a Municipal Attorney during the custodial investigation is not admissible in evidence because the latter cannot be considered an independent attorney.[20]

However, in spite of the inadmissibility of his extrajudicial confession, Maliao is not entitled to an acquittal because when he testified on cross-examination, he admitted that all the answers he gave to the questions propounded on him by the police investigator are true and correct of his own personal knowledge.

On cross-examination, Maliao implicitly admitted, to wit:

Q:

Now, in this sketch[,] there is a figure, who made this sketch?

A:

[(Maliao)]: I, myself, sir.

Q:

And also there is [the] name AAA nakahiga, who wrote [these] words?

A:

Me, sir.

Q:

And the other human figure, thereof there appears an arrow pointed to Luciano - nakadapa, who wrote these words?

A:

I was the one, sir.

Q:

And there is also a word "papag" who wrote this?

A:

I, sir.

Q:

And you also sketch[ed] the papag?

A:

Yes, sir.

Q:

Will you please explain to us why you said Luciano-nakadapa and AAA-nakahiga?

A:

Because I have seen [the] incident in my house.

Q:

So, you saw Luciano on top of AAA?

ATTY. ABELLERA:

Objection, the description is nakadapa not on top, your honor.

Q:

So, when you said Luciano-nakadapa, Luciano was on top of AAA?

A:

Yes, sir.

Q:

Now, where were you in this sketch if you will be required to point your distance from Luciano and AAA when you saw them in that specific position?

A:

I was beside the aparador, sir.

Q:

More or less how many f[ee]t or meters?

A:

Around 1 ½-arm leng[th].

Q:

You testified that you have several companions in having a drinking spree?

A:

Yes, sir.

Q:

And eventually you left your house together with certain persons, who are these persons?

A:

Luciano Bohol and Norberto Chiong, sir.

Q:

And [the] two co-accused of yours arrived with a girl?

A:

Yes, sir.

Q:

And then after the incident happened and during the investigation, you depicted that in your sketch the persons of AAA and Luciano Bohol?

A:

Yes, sir.

Q:

Now, in all events that happened in your house, you want to impress the court that you have nothing to do with the incident?

A:

None, sir.

Q:

Now, you pinpointed Norberto Chiong what was he doing at that time?

A:

He was just inside our house.

Q:

What do you mean inside the house was it together with Luciano Bohol and AAA?

A:

He was with Luciano Bohol and AAA.

x x x x

Q:

So who brought AAA to your house?

A:

Luciano Bohol and Norberto Chiong, sir.

Q:

So what did you do when you saw the scene that Luciano was on top of AAA?

ATTY. ABELLERA:

Objection, your honor.

Q:

Were you the one who lead the Police Investigator to recover the wooden stool?

A:

Yes, sir.

Q:

Were you the one who lead the Police to recover the t-shirt worn by AAA?

A:

No, sir.

Q:

What about some pieces of clothes?

A:

Yes, sir.

Q:

Why did you lead the Police to recover [the] pieces of clothes?

A:

Because they told me to help them, sir.

Q:

And where did you find [the] pieces of clothes?

A:

The pieces of clothes were recovered at the other side of the fence.

Q:

The fence of your house?

A:

Yes, sir.

Q:

Do you know who [threw] [the] pieces of clothes at the fence?

A:

Yes, sir. I, myself.

Q:

Why did you throw [the] pieces of clothes?

A:

Because of my fear, sir.

Q:

And [those were] the clothes worn by AAA during that time?

A:

Yes, sir.

Q:

What time were you investigated by Police Investigator Reyes?

A:

Around 11 or 12:00, sir.

Q:

But the final investigation was only terminated at around 4:30 p.m.?

A:

Yes, sir.

Q:

And it was the time when Atty. Bundang arrived?

A:

Atty. Bundang arrived at around 5 to 6 and it was already dark, sir.

Q:

Mr. Jessie Maliao, is it not a fact that before the commencement of the investigation, you asked the Police Officer to call Atty. Alinea [who] [was] the best friend of your father when he was in [the] mines?

A:

Yes, sir.

ATTY. ALINEA:

No more questions.

ATTY. ABELLERA:

Q:

Mr. [W]itness, you said that you were the one who lead the Police to recover the stool of AAA and this was recovered near your place, is that correct?

A:

Yes, sir.

Q:

And did you go with them when you recovered those clothes?

A:

Yes, sir

Q:

And when you went to that place do you know [who your companions were]?

A:

Yes, sir.

Q:

And when you went to that place do you know [who your companions were]?

A:

Yes, sir.

Q:

Who are they?

A:

Maninang, delos Reyes, Ducot and other Police Officers, sir.

Q:

Were you accompanied by Atty. Ortiz in going to that place?

A:

No, sir.

ATTY. ABELLERA:

That's all, your honor.

COURT:

Q:

During the incident subject matter of this case, you [stated] that [the blood were] scattered in your house?

A:

Yes, sir.

Q:

And you were the one who wiped it off?

A:

Yes, sir.

Q:

And [you] used the curtains in wiping it off?

A:

Yes, sir.

Q:

And were those curtains included when [you] pointed the wooden stool to the Police?

A:

Yes, sir.[21]

Section 4, Rule 129 of the Revised Rules of Court on Evidence provides that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. Maliao admitted he saw Bohol and Chiong rape AAA; that Chiong picked up a wooden stool and hit AAA with it on the chest and head; that Bohol and Chiong carried the bloodied body of AAA, instructed him to clean the floor and then they went out of the house; that he cleaned the room by wiping the bloodstains; and that he threw the t-shirt of AAA, placed the latter's short pants inside a sack containing garbage, threw the curtains which he used in wiping the bloodstains, and hid the wooden stool. He likewise admitted that he led the police officers to the place where he threw the pieces of clothes which he used in wiping the bloodstains in his house and that he accompanied the police officers to his house and pointed to them the wooden stool which he hid.

To hold a person liable as an accomplice, two elements must concur: (1) community of design, which means that the accomplice knows of, and concurs with, the criminal design of the principal by direct participation; and (2) the performance by the accomplice of previous or simultaneous acts that are not indispensable to the commission of the crime.[22] In this case, Maliao facilitated the commission of the crime by providing his own house as the venue thereof. His presence throughout the commission of the heinous offense, without him doing anything to prevent the malefactors or help the victim, indubitably show community of design and cooperation, although he had no direct participation in the execution thereof.

Having admitted his involvement in the crime and considering the weave of evidence presented by the prosecution, seamlessly linking Maliao's participation in the heinous offense, as elucidated by the autopsy report and testimonies of other prosecution witnesses, no doubt can be entertained as to Maliao's guilt. Beyond reasonable doubt, he is guilty as accomplice to the crime of rape with homicide.

WHEREFORE, the Decision dated August 2, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01299, including the sentence of guilt and the penalty imposed on accused-appellant Jessie Maliao, is hereby AFFIRMED. Costs de oficio.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] Leonardo-De Castro,**] and Peralta,[***] JJ., concur.

[*] Designated member of the Second Division per Special Order No. 658.

[**] Designated member of the Second Division per Special Order No. 635.

[***] Designated member of the Second Division per Special Order No. 664.

[1] CA rollo, pp. 134-154. Penned by Associate Justice Marina L. Buzon, with Associate Justices Regalado E. Maambong and Lucenito N. Tagle concurring.

[2] Id. at 75-82. Penned by Judge Avelino A. Lazo.

[3] Records, pp. 41-42.

[4] Consistent with the Court's decision in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502

SCRA 419, the real name of the rape victim is withheld and, instead, fictitious initials are used to represent her. The identities of her immediate family are likewise not disclosed in this decision.

[5] Id. at 41.

[6] Id. at 55.

[7] Id. at 237.

[8] Id.

[9] CA rollo, p. 136.

[10] Id.

[11] Id. at 136-137.

[12] Id. at 137-138.

[13] Records, p. 255.

[14] TSN, March 17, 1999, p. 8.

[15] CA rollo, p. 82.

[16] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[17] CA rollo, pp. 153-154.

[18] Id. at 63.

[19] G.R. No. 83466, October 13, 1999, 316 SCRA 582.

[20] Id. at 591.

[21] TSN, November 16, 2000, pp. 32-38.

[22] *People v. Cachola*, G.R. Nos. 148712-15, January 21, 2004, 420 SCRA 520, 525.

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